

No. 2503

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

A. B. HAMMOND,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

VOLUME II.

(Pages 257 to 568, Inclusive.)

Upon Writ of Error to the United States District Court
of the Northern District of California,
Second Division.

CLERK.

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(Deposition of Robert L. Harper.)

Cross-examination.

The cutting I have testified to was the spring of '89. I am testifying now from my recollection of what occurred in '88 and 1889. The only person I ever got any instructions from was Mr. Fenwick. I don't know as I knew Mr. Hammond at that time.

Redirect Examination.

I think there was a little Frenchman scaled the timber that I cut and skidded, I don't recollect what his name was. The last person who scaled for Mr. Fenwick was his foreman by the name of Bill Graham. The work that was done by Rich and McIntosh was in the gulch west of the Rich Gulch, between Rich's Gulch and the Strong Gulch. This 80,000 feet of logs that I found on the ground in this gulch, which I say I [229] knew from hearsay were cut by Rich and McIntosh went down the river to the Bonita Mill.

[Deposition of William Harley, for Plaintiff.]

The deposition of WILLIAM HARLEY, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

Direct Examination.

I am sixty-four past. I reside at Missoula, and have been a lumber-jack in the years past. November 11, 1885, I first came to the State of Montana, landing in Missoula. I was at one time employed in and about Bonita and Nimrod, Montana, cutting tim-

(Deposition of William Harley.)

ber. As to how I came to get that employment, in the first place, I worked in 1885 for Fred Hammond by the month, and he sold out to George Fenwick; then I went to work for Fenwick. I did not have any talk with A. B. Hammond when I first went to work for Fred Hammond regarding my working. It was in '85 that I went to work for Fred Hammond. That was in Bonita; then Fred sold out and I went to work in '86 for Fenwick. I had not worked at the Bonita Mill before I worked for Fred in 1885. My duties there was logging; supposed to be logging for Fenwick, that was my supposition, that was the way I was hired and he paid me that same way. Getting back of that, A. B. Hammond recommended me as a logger to Fenwick. I met A. B. Hammond on the street and he told me that Fenwick wanted a logger; he said I have recommended you as a logger, that is as near as I can remember the words. That is twenty-six years ago, and after that conversation with A. B. Hammond I went to work with George Fenwick. The first place I did any cutting for Fred Hammond was right there at Bonita and right on Buck Tail Hill, or Beaver Tail Hill, as it is now called. [230] That was for Fred Hammond in 1885. I cut the first logs right on that knoll. I was hired by the month, paid so much per month by Fred Hammond in 1885 when I was working on Beaver Tail Hill in the winter and fall of 1885. I couldn't say exactly how long I worked for Fred Hammond on Beaver Tail Hill. It is too long ago; several months; I cut what timber was worth while cutting

(Deposition of William Harley.)

on it. It was about May or the first of June, in 1886, that my employment with George Fenwick commenced. It is pretty hard to tell where first I cut for Fenwick. I know it was a little piece above Bonita, above Beaver Tail Hill, on the same side of the river, that is the first logs I cut. Beaver Tail Hill runs up in Cramer Gulch, and it was on the east of Beaver Tail Hill, that is the first logs I cut for Fenwick. I worked in that vicinity for Fenwick all along up and down the river until November, 1886, then I had a racket in there and I got out. I had charge of the logging crew and furnished the mill with logs; that is what I was there for. After we cut the logs off the east side of Beaver Tail Hill, we went up on the river. I had a movable tent. We had tents. We were cutting along the stream and lowered them in as we came to it. We went to Harvey Creek, above Nimrod, which was Carlin at that time. I cut up Cramer Gulch. I should think it was in the neighborhood of a mile and a quarter or a mile and a half, I don't know exactly.

Q. Was the Thompson Mill in Cramer Gulch when you were there?

A. Thompson come in in the night with about forty men; Fred Hammond and I had been there the winter before, and we had left this camp and utensils there. There was a [231] lot of logs cut, but this fellow Thompson come in in the night and started trouble everywhere else. We were up at Carlin. I had a crew of twenty men logging along the country there and Fenwick sent up for us to bring the crew

(Deposition of William Harley.)

down and run these fellows out, but they didn't run worth a fig; they stayed there.

(Witness Continuing:) I had a conversation with Fenwick as to who owned the land and logs. When he ordered me to take these men, to take my crew and run them fellows out of there, I asked him who owned this timber. He said Uncle Sam, I guess, I should suppose. I said them men don't run worth a fig off of Uncle Sam's timber. I told him I wouldn't have nothing to do with it, with them, I told him to give me my check and I quit. And I did quit at that time. Before we cut the timber in Cramer Gulch, I cut timber in Rich Gulch; we cut wherever we could find any logs around the river handy. I don't think I had any directions as to where I should cut; wherever I seen good timber, I went for it.

Q. Without regard to lines or ownership?

A. That was nothing to me at that time; at that time I was alive.

(Witness Continuing:) I was cutting in this manner under the directions of George W. Fenwick. I was hired by him and recommended by Mr. A. B. Hammond. I know where Medicine Tree Hill is. I cut logs all around it. That was the summer of 1886. These logs were put in the river, driven down to and sawed at the Bonita Mill, which Fenwick was then running. I have no recollection now of the amount of timber that I cut, I couldn't form an opinion. I am sure I didn't know how many we were putting in, [232] or anything else, or what we were cutting in a day at the mill; as long as I kept

(Deposition of William Harley.)

the mill furnished, that was all, because we didn't think we could furnish the mill when I started in, I didn't like the prospect, but we did manage to keep the mill running, that was in November, 1886. I know where Tyler Gulch is. I didn't have anything to do with cutting in Tyler Gulch. No one was cutting out of Tyler Gulch in my time. Nobody was hauling any logs out of there that I know of or remember of, I don't think there was. I have testified that we cut all along from Bonita up to Medicine Tree Hill. Some places we went further up the slope of the mountains in cutting than others. The farthest distance up the hill was up a quarter of a mile, I should estimate it, I don't think it was any more than that. We cut on both sides of the river—wherever there was any logs to cut handy to the stream, we cut them.

Q. Were you familiar during 1885 and 1886 with the market value of the lumber that was cut at the Bonita Mill after it was sawed into merchantable lumber?

A. No, sir, I couldn't form any opinion. All I would know would be hearsay; I heard it was about \$10.00 a thousand.

(Witness Continuing:) During all my employment in connection with the Bonita Mill I worked for wages. The way I was paid, I got a time check in Bonita to the Missoula Office—of the Missoula Mercantile Company, or the Montana Improvement Company, or something like that. It was the store that was run right here in Missoula. I don't know

(Deposition of William Harley.)

for certain who it was exactly who usually paid me. I think it was John M. Keith; I know he was [233] in the office anyway, that is a long time to remember.

Cross-examination.

All I know is what I remember about the Bonita country and Hellgate Canyon in 1886 and 1888; I have not been there since. When I was cutting down there around the Hellgate River, I saw lots of stumps that had been cut off at an earlier date. I remember the old Haycock Mill. I worked for Haycock in 1887, after I worked for Fenwick. I stopped working for Fenwick the fall of 1886. I worked for Haycock from May to December, 1887. I have testified that I was cutting anywhere I found any trees at all, without regard to lines or anything else. Everybody else was doing the same thing down there; there was no lines to go by. I don't think the country was surveyed at all. I never seen no lines. I suppose everybody else cut this way beside the Fenwick people. I never seen any caretaker of the timber at all; You know, the Thompson outfit came in there and cut the same as the rest. I was not able to run the Thompson people out. They stayed right there and put a mill in the gulch. At this late date I don't pretend to remember the particular area that was cut off at any time in these different places that I have spoken about—I cannot form an opinion; nor do I remember just how much was cut off of one side of a gulch, or how much off the other. It is a fact that everywhere that I cut I found evidences, stumps

(Deposition of William Harley.)

of trees, showing that people had been around about there cutting before.

Redirect Examination.

The Haycock Mill was located only three miles from Missoula, up here at the brick yard. It was not anywhere near Bonita. I don't remember anybody cutting in the Hellgate and running a sawmill in the Hellgate Valley other than the Thompson [234] outfit while I was working for Fenwick. The Thompson Mill was finally set in Cramer Gulch, about a mile and a quarter from the mouth of the gulch, as near as I could judge. The slope of the ground from the mouth of the gulch up to the Thompson Mill was up creek—there was a small creek in that gulch. I don't know where Thompson cut after I left; I was there a few days, we was cutting all around through each other. I don't know where those logs went that Thompson cut in there while I was cutting.

[Deposition of John Welch, for Plaintiff.]

The deposition of JOHN WELCH, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

Direct Examination.

I reside eight miles the other side of Hamilton; I used to be a timber-jack; some call it a timber beast. My present occupation, I follow logging, hire out. I am a brother of Thomas Welch, who was on the witness-stand yesterday. I am sixty years old. Once I worked at Bonita, Montana; commenced to

(Deposition of John Welch.)

work there the latter part of August or September, in 1886. G. W. Fenwick hired me to work there. I was employed by the month for the first year. As to duties—I followed the sidehill work, peeling logs, shooting down, when I first went there. There were no Government surveys out there while I was there. The first work I did for Fenwick was on Cramer Gulch. I commenced there the first part of September, 1886. I worked there until the first part of February. As to the distance from the mouth of Cramer Gulch up in the mountains my work extended, I think they used to call it a mile and three-quarters up to their camp, or a mile and a half. The Thompson Mill was not located in Cramer [235] Gulch until the time of the log war and the log war was in the fall of 1886. The log war was settled when I left Cramer Gulch in February.

Q. What part of the gulch did the Fenwick Mill get and what part did the Thompson Mill get?

A. Thompson got the right-hand side going up, or part of that. They used to fall trees and mark the stumps; they wouldn't cut the trees up at all, and then they would go around after awhile and cut it.

(Witness Continuing:) As to what became of the logs in the Cramer Gulch, a few below the mouth of the north branch, I call it, of Cramer Canyon, they went to Thompson's Mill. McConnell was the main man of Thompson's Mill. It was in the main Cramer Gulch that the division was made. I couldn't say how much the McConnell crowd got out of the gulch there. I was just working there by the

(Deposition of John Welch.)

month. I didn't take any notice of that, hardly at all. I couldn't say how much the Fenwick Mill got as compared with how much the Thompson-McConnell Mill got. I left the Cramer Gulch, I think it was the first part of February, 1887. I went from there to Bearmouth. Up there I was doing the same kind of work. Graham was the push up there. By the word "push," is meant the head man—the head man of the camp that tells you what to do. I stayed at Bearmouth from February until after the first part of April. Bearmouth is about two or three miles east from Tyler Creek. When I finished at Bearmouth, I came to Bonita to work. I worked on the slip, on the pond, hauling logs at the mill. That fall, in 1887, me and my brother took an agreement from Fenwick to cut some logs in the vicinity of the Bonita Mill. We cut on that first canyon across what they call Beaver Tail Hill. [236] At that time we didn't work in the Cramer Canyon. The first time we worked it was east of the Cramer Canyon where Harper afterwards worked. There was a little island near the mill; there was a few scattering trees on it and I think a few logs that had been left. We put them in. Around Beaver Tail Hill we cut a few logs, not many. I worked in the Welsh Canyon in 1889 and 1890 was the last logging I done for them, I think it was in the spring of 1890. While I was working there for Fenwick, Harris and Bob Haskerville they had a mill at the mouth of Rock Creek; that would be two miles west of Bonita. That mill had been there before I was there. Welsh Gulch

(Deposition of John Welch.)

was the last gulch we cut in. The year before that we cut down across from the mill and hauled some over and Fenwick hauled some over. That was on the right hand side of the river going up from Bonita south, I guess.

Cross-examination.

In 1897 I was back in the Hellgate Canyon. I was logging there and went busted. I was working for Harper and Baird across on the south side of the river in one of those old canyons. I don't remember the name of the canyon. It was close to the old mill—where Harper and Baird had their mill. The Fenwick Mill was on an island and their's was across the river. They built a bridge across the river to be on the right hand side of the river. I think it was in 1897 that Harper and Baird built their mill. While I was cutting for Fenwick over all this territory that I have testified to, I found evidences that somebody had been cutting there before; I found stumps everywhere I went. [237]

[Deposition of John Cunningham, for Plaintiff.]

The deposition of JOHN CUNNINGHAM, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

Direct Examination.

I reside at Kallispell. By occupation I am a lumberman and am fifty-three years old and have lived in the State of Montana twenty-six years. I was first employed in lumbering on the Blackfoot River by the Hammond people in 1886. Tom Hathaway

(Deposition of John Cunningham.)

first hired me when I was at Minneapolis. When Mr. Hathaway hired me he said I was to go to work for the Big Blackfoot Milling Company—that was the way I understood it. I came to Montana, right straight to Missoula. When we came to Missoula we saw A. B. Hammond, who told us to go up to the Blackfoot River and to report to George Hammond, which we did. At that time George Hammond was at the Headquarters Camp, at Fish Creek. My employment was by a monthly salary. We didn't have any contract. I was put in charge of a camp by George Hammond. It was the place known as the Nine Mile Prairie on the Blackfoot River. I think that was somewhere in September, 1886. The camp was called the Eckwall Camp, and I think I remained at that camp about five months. I was logging foreman of that camp and in charge of it. I was not at that time familiar with the section lines in that country. I had just come here. I am not sure if the country was surveyed at that time. Since then I have been along past the ground that I cut over adjacent to the Eckwall Camp; never been over the ground and never run out the lines or anything. No one ever intimated to me where the section lines were or where the different sections are in that vicinity. I was there with Mr. Swartz in March, but we didn't go over the lines at all. I think the Eckwall Camp was on section 21; we cut west from the Eckwall Camp. I cut all around the lines of section [238] 18, township 14 north, range 15 west, but I am not sure as to cutting any over the lines, I don't

(Deposition of John Cunningham.)

think I did. I couldn't swear to the year the timber was cut off section 18; it was in the spring of the year, and I think it was 1891 that I broke the landings there. The Eckwall Camp was situated north of the Big Blackfoot River, about three-quarters of a mile, I should judge. Since I worked at that camp I have learned where section 20 is. We did not cut any off of section 20 north of the river during the winter I was working at the Eckwall Camp, nor did we cut any off section 20 south of the river. I know the timber was cut off section 20, but I don't remember the year, nor can I recall what year it was I broke the landings on section 20. After I quit the Eckwall Camp I run the Headquarters Camp at Fish Creek; that was in 1887 and 1888. I was foreman of the camp. I know where the Edgar claim is, lying in the southeast corner of section 28, township 14 north, range 14 west. I think I cut timber off the Edgar claim in the winter of '87 and '88, when I was in charge of the Fish Creek Camp. I cut all around there. As to whether I cut any off section 34, on the northwest corner of section 34, I am not familiar with the lines; I was not at that time; I cut right southeast on the sidehill from the Edgar claim; that was the same winter. I could not give you any estimate of the amount of timber I cut off the Edgar claim. I think there was some cutting on the Edgar claim before I cut there. The timber was pine that I cut from the Edgar claim and it compared favorably as to quantity with the other cuttings that I did in that vicinity. I have not any idea of the amount

(Deposition of John Cunningham.)

of timber I cut off the quarter section that joined on to the southeast corner of the Edgar claim—the section which you have designated as 34—I don't know whether [239] it was 34 or not, but it corners right on the southeast of the Edgar claim; the way I have it in my mind is that it was the quarter section that joins on the southeast corner of the Edgar claim. That was cut in 1887 and 1888. The logs cut off the Edgar claim and the logs on the claim that you have designated as the northwest quarter of section 34, were driven to Bonner in the spring of 1888, I think. When I finished my work at the Headquarters Camp on Fish Creek, I contracted that year at the mouth of Belmont Creek. That winter when I cut at Belmont Creek, we cut sections 23 and 25. We built our camp on section 26. We built our camps of timber taken from 26 and built two bridges out of said timber. I didn't cut any on what was known as Longley Flats. I know there was a camp situated on the Longley Flats in 1887, that is, a tent camp, but I couldn't swear that they were cutting on that flat, but the camp was right on the bank of the river on that flat. I broke no landings on that flat—those logs were put in and floated away as fast as they were put in. This is what we call summer logging. Tom Harrington had charge of the camp at that time. Pat Hayes was not there at that time; he had a camp there the winter before. I don't know whether Pat Hayes cut any off the Longley Flats. I think he cut on 29. I have seen the Sontag ranch. I have been past it lots of times. I cut in

(Deposition of John Cunningham.)

the vicinity of that ranch in '87 and '88, but I do not remember from what portion of the section I cut off. I cut on both sides of the Sontag ranch-house, that is, east and west of the house. I didn't pay any attention to the lines; I didn't know who owned the sections; I didn't know anything about it. These logs cut in the vicinity of the Sontag ranch-house were driven to Bonner. I contracted from 1891 to 1897 [240] for the driving of the logs down the river. Those contracts were made with W. H. Hammond from whom I received my orders and directions while I was working under a salary. I went there first in 1886 and there was no difference in the way in which the logging operations were managed and directed from that time on up until I quit. During all that time those operations were under the management and direction of W. H. Hammond. For this work I got my checks at Bonner and during the first few years they were cashed at the Missoula Mercantile Company store, afterwards at the bank. I knew J. M. Boles who lived near Sunset. I knew of cutting going on back of Boles' house in '90 or '91, if I remember right. Dunnigan did that cutting. I do not know what section Bob Moore logged on back of Boles' house prior to the time that Dunnigan was there but he logged there. During the years I was working in the Blackfoot country I was paid from \$3.00 to \$4.00 per thousand for sawing and banking the logs on the river. The most I ever got for floating logs down the river to Bonner was 15¢ a thousand and from that down to 7, 7½¢ per thousand.

(Deposition of John Cunningham.)

When I was first employed by Mr. Hathaway, Jack Keith told me to report to A. B. Hammond. We went into the store and told him what we came for, and he told us to go and see A. B. Hammond, so Mr. Hammond gave us a team to send up the river.

Cross-examination.

When I said I was paid \$3.00 or \$4.00 a thousand that was for services in taking the logs from the stump and banking them on the river. W. H. Hammond always told me that under no circumstances was I to cut across lines that had been marked out, not to cut on Government lands. I got those instructions every year that I logged for them and I got called down quite a number of times besides. I got called down by Mr. Hammond for [241] cutting those logs off of section 26-14-16. That was where I made a camp. McNamara was contracting with me. I think I cut those logs on my own responsibility. Mr. Hammond did not contract to furnish the camp. When I was told to work in a certain locality I always found the lines had been run. Bob Moore logged at the Elk Creek Camp right at Sunset. I did not know where section 18-13-14 was. I was there in March of this year with Mr. Lantz and Mr. Schwartz, Government agents, but until then had not been back there since I left that country. We were not at the lines of these various sections. We were where we could see the ground in these various sections except section 26 or the Belmont section. We could not get on there on account of the snow, but I know I logged there. I did not log on section 26. I

(Deposition of John Cunningham.)

logged on 23 and 25. My camps were built on section 26. I do not know that it was in 1890 or 1891 that Dunnigan cut back of the Boles house. I am not very sure what year it was. I know there was cutting down there. I was there when Bob Moore was cutting it, but I wasn't familiar with the section he was cutting on. I know it was back of the Boles house but I am not sure when it was. I know where the Boles house was. I don't know as I could explain just where it was or not. I know where he lived, he just moved in there about that time, if I remember right, he was building a house there at that time. I do not pretend to know or testify as to the area of acreage that was cut over by Bob Moore at that time. I am positive I cut some of the Edgar claim, I could not tell you how much. I am positive I cut on the Edgar claim; the Edgar people was continuously at me not to fell trees on the house when I was cutting around the house there. There was some scattering trees right around the house and we did fall one right close to the house, and [242] the old lady she used to come after me about every day not to be falling trees on the house. There had been some cutting on the claim, I did not cut the entire claim. I did not go over the ground to see how much I left standing; I know I cut some on it, and then I was told to cut up on the sidehill, and finished up there, now, as to the section, I could not swear what section it was on. It was southeast from the Edgar claim. I do not remember that I cut on section 33, a railroad section. These gentlemen went

(Deposition of John Cunningham.)

out with me and pointed out the land and that is where I cut. I do not know whether I cut on section 15. I went where the walking boss told me, Mr. George Hammond. At that time I was a stranger in the country and did not know of the lines or much about them. I would not swear that I did not cut on section 33. I do not remember cutting north of the Sontag ranch-house. I am not sure that I cut on the Cunningham claim on the northwest quarter of section 34-14-14, I do not know what claim it is even. I said that I cut southeast of the Edgar claim up on the sidehill because we had roads down there, and we killed a horse on that hill. I testify positively that I cut on that quarter which corners on the Edgar claim in the same year that I claim I cut the Edgar claim; I was just there the one year. I could not tell the area I cut on the hillside southeast of the Edgar claim. The horse was not killed south of the Edgar claim, I think it was killed southeast. I did not know the lines of the Edgar claim. I never run out the lines of the Edgar claim. I cut in sight of the Edgar house, somewhere about a quarter of a mile from the house to the first of the timber on this sidehill, it might have been not quite that far, somewhere around there. I do not know on what part of the Sontag claim the Sontag house was located. I cut about half a mile east of the Sontag ranch-house, that was in '88 or '89, the second [243] year I was there. I cannot give the area I cut off. I also worked west of the Sontag ranch-house, probably half a mile on the sidehill. I took the scattering

(Deposition of John Cunningham.)

trees here and there where they had been left by other men that had been in there cutting. The company wanted to clean it up, so I went there to clean it up; just took a few scattering trees here and there that had been left. Milt Hammond done the scaling. I never kept track of the amount of timber I cut in that scattering timber tract. I do not remember having a bet with Milton Hammond as to the amount of timber on a certain stretch of land up there around by the Sontag house. I might have had such a bet, but I don't remember now. I believe I stated there was a camp on the Longley Flats in 1887. I did not state that they were cutting on this flat, if I remember that rightly. There was a logging camp there, that is, a tent camp, and they were logging along there that spring, when we were driving, the spring of '87. I do not know to what extent they took timber there at all. That was on the north side of the river. Pat Hayes built his camp there in the fall of 1887, along the line of sections 28 and 29. Pat Hayes was there the next spring after the tent camp was there, the spring of '88. The tent camp was there the spring of '87 and Pat Hayes built the camp later on, the fall of the same year. I have spoken about cutting this scattering timber up around the Sontag house. This scattering cutting was the only cutting that I ever made around the Sontag house. The quantity cut was small. Oh! it would not be two million feet. As to whether I ever estimated at any time that there was two million feet that I was going to cut up there, I would reply that I was picking up the scattering.

(Deposition of John Cunningham.)

trees; I probably didn't cut over five or six hundred thousand altogether; that is just an approximate estimate [244] of it, along that sidehill, possibly not that much; I know there was nowhere near two million. It was ground that had been cut over before.

After I got to Missoula, we went to the store of the Missoula Mercantile Company and Jack Keith was there. He was the first man we went to, and he told us to go and see A. B. Hammond. We told him that Hathaway sent us out, and asked him which way we would go, so he told us to go up the Blackfoot River, and he said he wanted to send a team up, so we took the horses along. That was all A. B. Hammond said to us. When I got up there, George Hammond put me to work. He never set any wages. Hathaway set our wages at \$35.00 a month. A. B. Hammond never mentioned wages to me. He never mentioned employment at all except he told me how to go up the Blackfoot River.

Redirect Examination.

I was in the courtroom yesterday when Mr. Tom Hathaway was testifying. He is the same gentleman who employed me in Minneapolis to come out here to work. The cutting near the Sontag ranch was done late in the fall of the year I was in charge of the Fish Creek Ranch. There had been other cuttings in the vicinity before that time. I couldn't say who cut it. The Boles house was the site of the Sunset Postoffice. By the term "breaking the landings" I mean that the logs were piled up in piles on the

(Deposition of John Cunningham.)

bank and we lowered them out into the water so that they would float down the river. There was no one else engaged in [245] breaking the landings, and making the drive down the river during the time that I had the contract for this work for the Hammond people—I had entire charge of it.

Q. Were any of the logs that were cut off of the sections over the lines that had been marked out, ever rejected by the Hammond people, and did they ever refuse to accept any of those logs?

A. Well, if there were any logs cut over the line, whoever cut them didn't say anything about it; they went into the drive and were settled and paid for.

(Witness Continuing:) During the time I was working up there, the Hammond people never refused to accept any of the logs that were cut and driven down the river.

Recross-examination.

The refusal would be made at Bonner if it was going to be made; I know very well they wouldn't know the logs; they wouldn't know anything about it; that is what I stated.

Q. Did you ever cut over the lines?

A. I cut some on 26 for building purposes, not intentionally.

(Witness Continuing:) That was my own enterprise when I had a contract, and I never did cut a log over the lines intentionally; I don't know that there was any other of the loggers that cut over the lines; I know that I had instructions not to cut over the lines, and I think all the loggers had. As to the

(Deposition of John Cunningham.)

cutting of the timber southeast of the Edgar claim, I just took the timber that cut handy, and I don't think I cut the whole of it; I don't think I come up near the line at all; there was something [246] happened, snow or something, I am sure, I didn't cut the whole of it. I don't know how much I got off of that. In reference to the Edgar claim, I don't suppose I cut to the lines there. I don't remember seeing the lines. As to whether the section lines wherever I cut were plainly cut, I don't remember much about the lines; at that time I was a stranger here. They would show me a bunch of timber and tell me to go out and cut it. I didn't run out no lines. I don't remember anything about the lines. I never looked for any lines. I know what you mean by the blazes that had been marked to define the timber. At that time you must understand we didn't cut timber as they do now; we only took a little bunch here and there; we didn't cut it clean. I don't remember much about the lines at that time.

[Deposition of Mike McNamara, for Plaintiff.]

The deposition of MIKE McNAMARA, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

Direct Examination.

I reside in Missoula County, Montana, and work in the woods; lumbering. I first came to the State of Montana in 1886. I worked for the Hammond Company. I commenced to work for them in 1886—the

(Deposition of Mike McNamara.)

Blackfoot Milling Company they were called at that time. I was working for a salary. W. H. Hammond employed me. It was along in August or September, in 1886, that I first commenced to work for them. I worked for them at Bonner. The first work I did I built an apron there for the dam; I then went up the river and worked up there in the woods; I drove a team there. I worked off and on about fourteen or fifteen years for the Big Blackfoot Milling Company. Their mill was located at Bonner when I [247] first commenced to work for them; no other mill was located there that I know of. It was along in the fall, August or September, in 1886, that I first went in to the woods to work for them. I worked at Tom Harrington's camp awhile; at Cunningham camp awhile that winter. Tom Harrington's camp was located at the mouth of Elk Creek. I know where the Longley Flats were situated. Tom Harrington was camped on section 21. I don't know what lands were cut over in the vicinity of the Harrington Camp at the mouth of Elk Creek. I worked in the Eckwall Camp in 1886 and 1887. The winter I worked there at the Eckwall camp, we were supposed to cut on sections 19 and 17. Cunningham was in charge of the camp that winter. After I left the Eckwall camp, I worked at Bonner; I worked on the drive after I got there; worked there that winter; I drove that spring and worked at Bonner that summer. I have seen the house now known as J. M. Boles' residence as I was going by on the road; I don't believe I was ever in there; I think

(Deposition of Mike McNamara.)

there was cutting done in the vicinity of the Boles' house—it would be southwest of the Boles house, right in pretty close in the vicinity of where he lived; I cannot fix the distance. I was not interested enough. I think it is pretty close there; I couldn't hardly tell you who did the cutting; there were several camps in there. I think it was Bob Moore, probably it was he. I think it was in 1888 that the cutting was done in there by Bob Moore. I never worked at the Fish Creek camp. I knew where the Sontag ranch was. They cut around in the vicinity of the Sontag ranch house on Fish Creek. I don't remember the year. I have been by the Edgar claim in the vicinity of the Fish Creek camp. I was not present and never saw them ever do any cutting off of [248] the Edgar claim; I was not up the river; I didn't work in there. In the winter of 1888 I worked below Belmont Creek. Our camp was built on 26. We cut and logged on 23 and 25. The logs that were cut during the time that I was working for the Big Blackfoot Milling Company were driven down to Bonner. I don't know of any other mill to which the logs could have gone than the mill at Bonner. I knew of a camp on Longley Flats. Bob Moore, I guess, was the first man who put in a camp there in the spring of 1887. I was not at Moore's camp on Longley Flats when they were doing any cutting; I went through that camp; I did not work there. I went up the trail that time; I know where the camp was located; I know where they cut; they cut on section 29; there was no evi-

(Deposition of Mike McNamara.)

dence of cutting on the Longley Flats when I went up there. This was the same camp that was afterward occupied by Pat Hayes. Pat Hayes put in the balance of that winter cutting. He took Bob Moore's place and he built a camp, he put the logs in the river that winter. I was acquainted with Tom Harrington. I didn't know of him cutting any on the Longley Flats. I think he cut some timber east of there on 21; he didn't cut any timber on 28, that was supposed to be the Longley Flats. I know now he did not cut there. Tom Harrington pitched his tents on 21, that would be the section east of it.

Cross-examination.

During all the time I worked up in the Blackfoot River country for what has been called the Big Blackfoot Milling or the Hammond people, I always got my instructions from W. H. Hammond. I was always instructed that I must respect the lines that had been blazed out and never to cut over them. Mr. Hammond gave me those instructions and to [249] Cunningham that I know of, and whenever I was doing any of the cutting on these different places that I have testified to, I had those instructions; he always cautioned us not to cut any timber, that is, Government timber over the lines; he told me that; he told Cunningham, I heard him. I never cut any over the lines that I know of. I cut a little, I admit I cut some on 26, a few logs to put up a camp; there was no timber cut when I went there. Me and Cunningham cut a little to put in a bridge. That was when I had a contract down there. I cut those logs

(Deposition of Mike McNamara.)

for my own benefit to build a bridge for to go over on to 25, on the other side of the river and I cut some logs to put up a camp. Cunningham and I did that on our own responsibility entirely.

[Deposition of James M. Boles, for Plaintiff.]

The deposition of JAMES M. BOLES, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

Direct Examination.

My full name is James M. Boles, and reside about a mile and a half from Missoula. I have lived in the State of Montana about thirty-five years; I am fifty-eight years old. Most of my time my occupation in this state has been that of farming, part of the time mining. I lived at what is known as Sunset Postoffice, in the State of Montana, for twenty-three years. I first went there in '89, I believe. I lived on lots 3, 4 and 5, on the southwest quarter of the northwest quarter and the northeast quarter of the southwest quarter of section 6, township 13 north, range 14 west. I knew where the land known as section 18, township 13 north, range 14 west was situated. I used to have cattle around there. I knew of people cutting and hauling timber off [250] that section. I think it was George Hammond. I would not be positive, but I think it was the year '91 that he cut off that section. I recall the incident of his cutting and hauling the timber off that land, as they had to go through my ranch and they made a road through the ranch. It was

(Deposition of James M. Boles.)

about two years after I came on to the ranch that this cutting was done.

Q. Were you familiar with the price of sawed lumber in that vicinity from the year 1889 up to 1892 and 1893?

A. Well, of course, I bought a little lumber, I could not say positively, but I think I paid \$10.00 per thousand feet for it.

Cross-examination.

I believe I could swear positively that it was the northwest quarter. I had run the lines for the ranch. I owned 160 acres in section 6. Section 18 lies south of 6, with one section between them. I know this quarter section of 18 was cut because of the stumps around it. I don't think there has been anything cut off the northeast quarter or the south half of that section. The only timber that has been cut off of section 18 is the northwest quarter. That was the case on the first day of March of this year. I know by the corners that it was the northwest quarter of section 18. I found the corner of section 7. I don't know as there was a quarter corner on the west line of section 18. I never run out the west line of section 18. I found the northwest corner of sections 7 and 18. I was not looking for corners, just simply riding through there hunting cattle. I did not run out any line. I did not find the center of section 18. I have hunted over there a great deal. My testimony is based on my impressions from long ago [251] when I was living at Sunset Postoffice, that the timber that was cut on that was cut on the

(Deposition of James M. Boles.)

northwest quarter of 18. While I lived there my cattle ran on 7 and 18. I bought a quarter section on 12, cornering on section 18. I had to run the line to section 7 here. My quarter lay in the east half of the southwest quarter and the west half of the southeast quarter, in the middle of the section, that left a quarter of a mile between 18 and my corner. I had to find the corner of 7 and 18 in order to find my line, my corner. I bought this land seven years ago. All of section 7 is cut except the strip on the east side that comes in above the quarter corner of 18. Section 18 was cut first. Section 7 was cut in the fall of '92 and '93, I think. It was cut after section 18. It was cut by a different contractor. I claim G. L. Hammond cut the northwest quarter of section 18. There is nothing else cut on that section. Sections 12 and 13 of the township adjoining on the west were cut the same time as section 7 was. It was all cut off by Pat Dunnigan. I run out the lines to the southwest corner of section 18. I ran from the corner of 7 to the southwest corner of 18. That was the western boundary of section 7. I ran the line from the northwest corner of section 7 down to the southwest corner of section 18, and the south line over to the north corner of 20. I told you I ran that line about 7 years after I bought that place. I am pretty sure that the timber was cut in '91, and the timber was cut when I ran the line. I know where the northwest quarter of section 18 is, but I have not run the boundaries clear around that. I have run only one of the lines that bounds the northwest quar-

(Deposition of James M. Boles.)

ter. I know that the northwest quarter lies on one side of the line I ran, but that is all I know. [252]

Redirect Examination.

I have been familiar with the northwest quarter of section 18, township 13 north, range 14 west, for twenty-two years. I acquired my familiarity with it because my cattle ran on sections 7, 18, 12 and 13. I have lived within a mile and a half of section 18 for twenty-three years. I never knew the northwest-quarter of section 18 as the Kelly claim.

Recross-examination.

I never knew of a man named Kelly living on that northwest quarter of section 18. I never saw anyone living there. I swear that George L. Hammond cut the northwest quarter of section 18 about October 24, 1896. I don't remember seeing G. L. Hammond around there at that time. He lived right by me at Sunset in 1891 and '92. I want to be understood as testifying that all the timber was cut off of the northwest quarter of section 18 in 1891. I know that Hammond located up there on 18, and that he drove the logs down through my place. I also know that the northwest quarter is the only quarter that was cut on section 18. At the time George Hammond cut this he lived on section 1 in the next township. I saw the men going up there to cut on the northwest quarter of section 18. They went from George Hammond's farm on section 1, in 13-15. I know it was soon after I went on the ranch, the next year or two following; that is all I know, but I think

(Deposition of James M. Boles.)

it was in 1891-2. Of course they cut all winter. George Hammond was living on section 1 when I went there. A man by the name of Demons was his foreman. [253]

[Deposition of C. H. McLeod, for Plaintiff.]

The deposition of C. H. McLEOD, a witness called and sworn on behalf of the plaintiff, was offered and read in evidence by the plaintiff, as follows:

Direct Examination.

My full name is Charles Herbert McLeod. I reside at Missoula. I am fifty-three years old and have resided in Missoula since March 29, 1880. I am president of the Missoula Mercantile Company and have been such since the year 1908. It was in March, 1880, that I first entered the employ of the Missoula Mercantile Company. The Missoula Mercantile Company was not incorporated at that time. Eddy-Hammond & Company was the name of the firm that I went to work for. The firm of Eddy-Hammond & Company was a copartnership, composed of R. A. Eddy, A. B. Hammond and E. L. Bonner. I don't know what interest A. B. Hammond had in the firm of Eddy-Hammond & Company when [254] I first entered their employ, but I think he was a third owner. At the time I entered the firm, Mr. Hammond and Mr. Eddy were running the concern. At that time Mr. Bonner was living in Deer Lodge; he had a store in Deer Lodge and also had a store in Butte. Mr. Hammond did not control the firm. Some of its affairs he man-

(Deposition of C. H. McLeod.)

aged and others Mr. Eddy managed. Mr. A. B. Hammond's duties were buying and selling merchandise. The firm of Eddy-Hammond & Company was engaged in the general merchandise business. At that time that was the only business in which they were engaged. It was in 1881, I think, that Eddy-Hammond & Company contracted with the Northern Pacific Railroad Company for a certain amount of bridge timber and ties and clearing the right of way for a distance of about two hundred miles during the construction days of the Northern Pacific—about that I don't know exactly. They contracted to furnish ties and bridge timber for the construction of that road. I think that contract ended about Jan. 1, 1883. They operated, I think, during that time from Drummond to Cabinet, that is about two hundred miles around here. Most of the work was west of the town of Missoula. I don't know whether any of it was near the town of Bonita. I don't believe Eddy-Hammond & Company operated in the vicinity of Bonita at that time, with the exception that they might have made a contract for some railroad ties. They were not operating any mill at any place during that time, that I know of. They procured their timber by contracting for same between 1881 and 1883 with some mills in different sections of this country along the line of the Northern Pacific that was being constructed at that time. I remember the Fred Hammond Mill near the present town of Bonita, but don't remember exactly the year. I don't know whether any [255] of the

(Deposition of C. H. McLeod.)

timbers that were furnished by the firm of Eddy-Hammond & Company to the Northern Pacific Railway under this contract were sawed and cut at the Bonita Mill. I don't know who erected the Fred Hammond Mill at Bonita, unless it was the Montana Improvement Company. The Missoula Mercantile Company was incorporated in August, 1885. The Missoula Mercantile Company succeeded and acquired the interests of Eddy-Hammond & Company, that is to say, the business was taken over. The firm of Eddy-Hammond & Company was not engaged in the lumbering business at that time. They had retired from it. I was not a member nor a stockholder of the corporation known as the Montana Improvement Company; nor was I employed by it. I think Mr. Winstanley, who is dead now, was in charge of the books of the Montana Improvement Company from the time it was organized up until it went out of existence. The Montana Improvement Company was organized in the fall of 1882 or the spring of 1883, and took over all the lumber interest that had been conducted by Eddy-Hammond & Company prior to January 1, 1883. I think Mr. A. B. Hammond was a stockholder of the Montana Improvement Company. I don't know what his position was in reference to the management of the affairs of the Montana Improvement Company. I think Mr. Bonner was president, and I think Mr. Eddy was vice-president; I don't know what position Mr. Hammond had and I am not sure who the officers were. I don't remember how long the Mon-

(Deposition of C. H. McLeod.)

tana Improvement Company continued in active lumber business. I think they discontinued business in the year 1885. I am not quite positive about that. Nobody succeeded the Montana Improvement Company, that I know of. As to what became of the interests of the Montana Improvement Company in 1885, I think they disposed of them to different [256] parties and got out of the lumber business. I cannot say to whom they disposed of their interests. I think they were sold to different parties, different holdings. A. B. Hammond did not take over any of the interests of the Montana Improvement Company when it was dissolved. I was a stockholder in the company known as the Blackfoot Milling and Manufacturing Company. I have forgotten who were the officers and stockholders of that company. I think Mr. Bonner was the president; I think Mr. A. B. Hammond was a stockholder in that company. I think that company was organized in 1888. It manufactured timber, I think, in the Bitter Root Valley and I think they owned the Blackfoot Mill, I am not sure, and leased it to W. H. Hammond. The Blackfoot Mill was erected at Bonner in 1885 or 1886 by W. H. Hammond. The Blackfoot Milling and Manufacturing Company acquired the Bonner mill in 1888 or 1889. I think it leased the mill for several years to W. H. Hammond, between three and four years, I am not positive. After the Montana Improvement Company ceased to operate, I think G. W. Fenwick conducted the mill at Bonita. The Missoula Mercantile Company had

(Deposition of C. H. McLeod.)

an account with G. W. Fenwick while he was running the Bonita Mill. I think the Missoula Mercantile Company sold them merchandise. I don't remember whether it took care of orders issued by Fenwick for labor in getting out lumber and timber for use about the Bonita Mill. As to the way their business was conducted and how the accounts were kept between Fenwick and the Missoula Mercantile Company, Fenwick bought merchandise and paid for the merchandise himself with checks and one thing and another. I don't know whether Mr. Fenwick was accustomed to issue orders on the Missoula Mercantile Company for labor and for the amount that was due the various men who worked there. I know a great many mills [257] and a great many operations that were carried on in Western Montana have been financed by the Missoula Mercantile Company. To what extent the Fenwick operations were financed by the Missoula Mercantile Company, I don't remember. I know we sold them merchandise; to what extent we paid orders, I don't remember, we may have done so. Mr. Fenwick made the arrangement between him and the Missoula Mercantile Company by which his account with the company was taken care of. So far as the Missoula Mercantile Company is concerned, I have an idea that the account was *arrange* for by the board of directors, they generally arranged about those matters, such large matters the board passes on. I think Mr. A. B. Hammond was a member of the board of directors at that time. During the time the

(Deposition of C. H. McLeod.)

Missoula Mercantile Company carried the account of George W. Fenwick, including the operations of Fenwick at Fred Hammond's mill, at Bonita, A. B. Hammond was a director of the company. I don't know whether he occupied any other position or not at that time. The Missoula Mercantile Company never had any interest in a mill known as the Bonner Mill that had been constructed by W. H. Hammond, nor do I remember of it ever at any time owning any sawmill or having any interest in any sawmill in the State of Montana. I don't know whether the Missoula Mercantile Company ever paid taxes on the Bonner Mill at any time between the years 1885 to 1892. I don't remember any contract of any kind. I don't think the Missoula Mercantile Company ever paid any taxes on any other sawmill during the years mentioned. There were different persons in charge of the tax matters relating to the Missoula Mercantile Company during the years from 1885 to 1892. I think Mr. J. M. Keith, from 1885 to 1888 or 1889, and I think Mr. Moser came in there as secretary of the company and looked after the taxes from that time on to 1895. During the times [258] these gentlemen were looking after the assessments; I suppose they were referred to the directors before the taxes were paid, but they had charge of the assessments and looked after the business, putting in our property, and it was approved by the Board of Directors, I suppose those things generally are. As a general rule, the assessment list would be finally approved by the Board of Directors

(Deposition of C. H. McLeod.)

before it was handed to the County Assessor. I was a stockholder in the Big Blackfoot Milling Company but had nothing to do with the management of the affairs. W. H. Hammond had charge. A. B. Hammond was a director and member of that company. I don't know what other position he occupied. He didn't manage that company, Mr. W. H. Hammond always managed it. I think it was about 1890 that company was incorporated, but I am not sure of that. It engaged in lumbering operations on the Big Blackfoot from the time they incorporated until they sold out to Mr. Daly in 1898, but I don't remember the date of the incorporation. I think the Big Blackfoot Milling Company succeeded to the interests of the Blackfoot Milling and Manufacturing Company. W. H. Hammond was in active charge and management of the affairs of the Big Blackfoot Milling Company after its incorporation.

Q. Was there any change in the management of the Bonner Mill from the time it was erected by W. H. Hammond until it was sold to the Daly interests in 1898?

A. As I remember, W. H. Hammond built the Blackfoot Mill and operated for several years. I think some years later, I have forgotten what year, the Big Blackfoot Milling and Manufacturing Company was organized, when W. H. Hammond, as I remember^{it} it, I only know from hearsay, disposed of a portion [259] of the interests to different parties, and then I think leased from the Blackfoot Milling and Manufacturing Company for a number of

(Deposition of C. H. McLeod.)

years that property, at a certain rental, what rental I do not know. Afterwards the Blackfoot Milling and Manufacturing Company also owned some interest in the Bitter Root Valley; later on they were amalgamated and a company organized. Now, the Big Blackfoot Milling Company, W. H. Hammond became its manager on a salary and operated the mill from that time until they sold to Mr. Daly in 1898—that was my understanding.

Q. Who was in active charge of the work being conducted at the Bonner Mill from the time it was established in 1885 up until the mill was sold to the Daly interests in 1898?

A. W. H. Hammond was the active—W. H. Hammond owned it and run the mill for himself for several years; he afterwards leased it from the Blackfoot Milling and Manufacturing Company and paid the company rental for the use of the mill, and then the Big Blackfoot Milling Company was organized. W. H. Hammond became its president and run the mill on a salary and owned a portion of the stock, I think about a quarter of the stock, I do not know what amount of the stock he had.

(Witness Continuing:) I did not have anything to do with the sale from W. H. Hammond to the Blackfoot Milling and Manufacturing Company of the Bonner Mill. I don't remember of seeing any of the contracts or title papers by which the ownership was changed at that time. I think I was president of the Blackfoot Milling and Manufacturing Company for a time; I don't know how long a period, and I

(Deposition of C. H. McLeod.)

think I signed a lease as president of the company; I don't remember what the terms of that lease [260] were now. I don't know where that lease is at this time, but I think Mr. Burnett has that lease.

Mr. BURNETT.—I think I have it here. No, sir, I haven't it here.

Mr. HALL.—Will you produce it?

Mr. BURNETT.—Yes, sir.

(Witness Continuing:) I do not know of my own knowledge the amount of stock that A. B. Hammond owned in the Montana Improvement Company or in the Blackfoot Milling and Manufacturing Company, or in the Big Blackfoot Milling Company. I do not know whether the Missoula Mercantile Company owned any stock in the Montana Improvement Company. I do not think the Missoula Mercantile Company owned any stock in the Blackfoot Milling and Manufacturing Company; I do not think it did in the Big Blackfoot Milling Company. The Montana Improvement Company did not own any stock in the Missoula Mercantile Company; neither did the Blackfoot Milling and Manufacturing Company; neither did the Big Blackfoot Milling Company.

(Here the attention of the witness was directed to a tabulation of the stockholders and the amount of stock held by each in the Missoula Mercantile Company.)

(Witness Continuing:) I think this statement is correct.

Mr. HALL.—I have some records here that are

(Deposition of C. H. McLeod.)

very long and voluminous; they are the records from the stock books of the Missoula Mercantile Company, showing that Mr. A. B. Hammond was a stockholder from the time that company was organized, August 20, 1885, right up until October, 1891; then there is another list showing his holdings from October, 1891, on up until [261] October 27, 1898.

Mr. WELLER.—Those statements were prepared for you and given to you?

Mr. HALL.—Yes.

Thereupon plaintiff offered and read in evidence the said records, statements or schedules taken from the stock books of the Missoula Mercantile Company, which said records, statements or schedules are in the words and figures following to wit:

STOCKHOLDERS OF MISSOULA MERCANTILE COMPANY,

From August 20, 1885, to October 24, 1891.

Stockholders.	Aug. 20/85 issue Original	Sept. 3/85	Jany. 30/88	July 17/88 Capital stock increased to \$300,000.00	Sept. 20/88	June 17/90	Sept. 9/90 Capital stock increased to \$600,000.00	Octr. 24/91
Richard A. Eddy	832	265	375	265	265	265	530	530
Andrew B. Hammond	832	265	265	285	285	510	1020	1120
Edward L. Bonner	832	166	236	166	166	34	68	68
George T. Scully	1	1						
Charles H. McLeod	1	101	101	201	201	840	1680	1680
Thomas G. Hatheway	1	1	1	1	31	100	200	200
John M. Keith	1	101	102	102	102	102	204	204
Mrs. Edwinna M. Eddy		500	620	620	590	223	446	346
Mrs. Florence Hammond		300	300	300	300	300	600	600
Edwinna C. Hammond		50	50	50	50	50	100	100
Florence Hammond		50	50	50	50	50	100	100
Richard E. Hammond		50	50	50	50	50	100	100
Leonard C. Hammond		50	50	50	50	50	100	100
Charles E. Bonner		200	200	200	200			
Mrs. Caroline S. Bonner		200	360	360	360	253	506	506
Lenita J. Bonner		200	200	200	200			
I. S. G. Van Wart			20					
Harry T. Van Wart			20	20	20	20	40	40
Harry C. Keith				20	20	20	40	40
T. C. Power & Brother				60	60			
Bessie A. Bonner						133	266	266
	2500	2500	3000	3000	3000	3000	6000	6000

October 24, 1891:

Capital Stock increased to \$1,200,000. All stock returned for cancellation and new stock issued as follows: [262]

First Preferred	3000	shares.....	\$300000.00
Second	"	3712 "	371200.00
Common	"	5288 "	528800.00
			<u>\$1200000.00</u>

STOCKHOLDERS OF MISSOULA MERCANTILE COMPANY,

October 24, 1891, to October 27, 1898.

	Oct. 24/1891, 1 stp. 2 P.		Feby. 1, 1892, 1 P. 2 P.		April 1 P. 12/94, 2 P.		Com.		1 P.		Oct. 27, 1898, 2 P. Com.	
E. I. Bonner	1500	80	1500	95	1500	95	95	71	500	80	80	80
R. A. Eddy	500	150	500	80	500	80	80	80	1000	150	150	150
E. M. Eddy	1000	2142	1000	150	1000	150	150	150		2142	2156	2156
A. B. Hammond		642		2142		2142	2092	2156		614	644	644
C. H. McLeod		204		592		497	592	592		204	214	214
J. M. Keith		95		204		204	50	50		40	60	60
T. G. Hatheway		40		40		40	60	60		100	100	100
H. T. Van Wart		100		100		100	100	100		62	62	62
F. T. Sterling		62		62		62	62	62		25	25	25
W. A. Mentrum		62		62		62	62	62		22	22	22
T. B. Thompson		25		25		25	45	45		22	22	22
H. C. Keith		22		22		22	22	22		22	22	22
J. P. Menard		22		22		22	32	32		22	22	22
J. M. Price		22		22		22	47	47		22	47	47
T. T. McLeod		22		22		22				25	25	25
G. A. Barnes		22		22		22				10	10	10
D. H. Ross		22		22		22				10	10	10
T. Hosey		25		25		25				25	25	25
W. S. Settle		20		20		20				20	20	20
F. W. Jones		10		10		10				20	20	20
C. F. Dorman		10		10		10				50	50	50
T. J. D. Jenkins		40		40		40				95	95	95
G. Moser		25		25		25				1299	95	71
T. E. Bassler		20		20		20				100	100	100
G. W. Dougherty										100	100	100
B. B. M. Co.										1341	1341	1341
C. L. McLeod										3000	3712	5288
F. H. Allison										3000	3712	5288
E. Sharnikow										3000	3712	5288
C. S. Bonner										3000	3712	5288
L. J. Bonner										3000	3712	5288
B. A. Bonner										3000	3712	5288
Treasury Stock										3000	3712	5288

Capital Stock reduced to \$850,000.00 All stock returned for cancellation and common stock issued for \$850,000.00. [263]

Thereupon plaintiff offered and read in evidence the Minute-book, including the By-Laws and Amendments thereto, of the Missoula Mercantile Company, commencing with August 19, 1885, up until the latter part of 1894. The said Minute-book, By-laws and Amendments thereto, are in the words and figures following, to wit:

**[Exhibit—Minute-book of Missoula Mercantile Co.,
etc.]**

“Missoula, Montana, August 19th, 1885,
9 o'clock A. M.

A meeting of the Trustees named in the Articles of Incorporation of the ‘Missoula Mercantile Company,’ was held on this 19th day of August, 1885, for the purpose of organization under the Charter of said Company.

The said meeting was called to order by Andrew B. Hammond, who upon motion of John M. Keith was made Chairman of the Meeting and John M. Keith was elected Secretary thereof.

The Chairman of the meeting announced that the first business before the meeting was the election of a President and Vice-President to serve for the three months for which the Trustees named in the Charter were to serve. Whereupon the Chairman appointed Thomas G. Hathaway and Richard A. Eddy as Tellers and the said Trustees proceeded to cast their ballot for President, when after counting

said ballots said Tellers reported that Andrew B. Hammond had received a majority of the votes cast for President and he was declared elected President of said Company.

Whereupon the said Trustees proceeded to cast their ballots for Vice-president, when after counting said ballots the Tellers reported that Richard A. Eddy had received the majority of the votes cast and he was declared duly elected.

The President then announced that the books for the subscription to the capital stock of said Missoula Mercantile Company were now open whereupon the following subscriptions were entered as follows:

[264]

Andrew B. Hammond.....	832	shares
Richard A. Eddy.....	832	“
Edward L. Bonner.....	832	“
Charles H. McLeod.....	1	“
John M. Keith	1	“
Thomas G. Hathaway.....	1	“
George T. Scully.....	1	“

2500 shares.

whereupon the President announced that all the stock of said Company was subscribed for.

Upon motion of John M. Keith, the President, Vice-president and Thomas G. Hathaway were appointed a Committee on By Laws, to report to an adjourned meeting of this board.

There being no further business the meeting was adjourned to meet at seven o'clock P. M. to receive

the report of the Committee on By-Laws.

A. B. HAMMOND,
President.
JOHN M. KEITH,
Secretary.

Missoula, Montana, August 19, 1885.

7 o'clock P. M.

The meeting of the adjourned Trustees meeting of the "Missoula Mercantile Company" was called to order by the President. There being present President, Vice-president, John M. Keith and Thomas G. Hathaway.

Mr. Eddy from the Committee on By-Laws presented the following By-Laws for the approval of the Trustees. [265]

BY-LAWS.

Sec. 1. The officers of the Company shall be a President, Secretary, Treasurer and Manager and a Board of six Trustees.

Sec. 2. The President and Vice-President shall be elected by the Board of Trustees at the first meeting after their election, and from their own number and they shall hold office until the next annual meeting of the stockholders or until their successors shall be elected and qualified.

Sec. 3. At the same meeting of said Board at
Altered.
See page
23. which the President and Vice-President are
elected, the President shall appoint a Secretary and a Treasurer, whose appointments shall be approved by the Board.

Sec. 4. In addition to the above officers there shall be a Manager, who shall also be appointed by the President at the first meeting of said Board and approved by the Board of Trustees.

Altered.
See page
23.

Sec. 5. The President shall preside at all meetings of the Board of Trustees and the stockholders: He shall act as Inspector of all elections of Trustees and certify who are elected Trustees: He shall sign all deeds and contracts on behalf of the Company, and all certificates of stock of the Company. He shall at each annual meeting of the stockholders make a report to the stockholders of the state of the business of the Company. He shall have general charge and supervision over all the business of the Company and over all its officers and employees. All appointments of subordinate employees shall be subject to his approval. [266]

Sec. 6. The Vice-President shall assist the President, shall preside at all meetings of the Board or of the stockholders at which the President is not present, and during the absence of the President or his inability to act shall possess the same powers and perform the same duties.

Sec. 7. The Secretary shall keep a fair and correct record of the proceedings of all meetings of the Board and of the stockholders and all other official business of the company: He shall attend to the giving and serving of all notices to the Trustees or stockholders or otherwise required by law. He shall have charge of the stock book and stock certificate book, and of the Transfer book, Registration of

Transfers, and issue of new stock certificates. He shall attend to the general correspondence of the Company and perform such other duties as are incident to the office of secretary or may be assigned to him by the Board.

Sec. 8. The Treasurer shall have charge of all the moneys, securities for money, and other assets of the Company but shall deposit so much of the moneys coming into his hands as is not required for the immediate current purposes of the Company with a Bank or Bankers designated by the Board in the name of the Company. He shall keep a correct and full account of all moneys received and distributed by him or on his account or upon his order, and of all securities or other assets received or delivered by him. He shall render a statement of his cash account at each regular meeting of the Board, and shall perform such other duties as are incident to the office of Treasurer. The Board may from time to time fix the amount of cash to be kept in hand by him. [267]

Sec. 9. The Manager shall have general charge of the business under the supervision of the President, and direction of the Board. The Manager shall appoint (subject to the ratification of the President and at the pleasure of the President), all subordinate agents.

Sec. 10. The Trustees may from time to time adopt general regulations for the transaction of the Company's business, the appointment and duties of subordinate officers, the purchase of supplies and materials and the keeping of the accounts. Such

general regulations when adopted shall only be altered or rescinded by a vote of a majority of all the Trustees at a special meeting of the Trustees called for that purpose.

Sec. 11. The salaries of President, Vice-President, Secretary, Treasurer, and Manager and all subordinate agents shall be fixed by the President and approved by the Board of Trustees.

Sec. 12. No payments shall be made or other assets delivered over except upon the written order or draft of the President or Manager, and all checks upon the Company's Bankers shall be signed by the Treasurer, but the salaries and wages of all officers and employees may be paid by the Treasurer and the same regularly entered upon the books of the Company, without order for the separate amounts.

Sec. 13. There shall be selected from the Trustees an Executive Committee composed of three persons who shall be named by the President and approved by the Trustees, whose duties it shall be in the absence of regular meetings of the Board to perform all the duties, and do all things that might be done by the full Board when in regular session and the President of this Company shall be Ex-officio Chairman of said Executive Committee. [268]

Section 14. Four trustees shall form a quorum for the transaction of any business of all regular meetings of the Board, *except for the alteration or amendment of these By-Laws,* and any vacancies

*The words "Except for the alteration or amendment of these By-Laws" were inserted before the adoption of these By-Laws. See line three, Section fourteen.

occurring in the Board by death, resignation, disqualification or incapacity to act shall be filled by the remaining Trustees and the Trustees so elected shall hold office until the next annual meeting and until his successor is elected and qualified. The majority of any Committee may act and may determine the time and place of meeting.

Sec. 15. The annual meeting of the stockholders shall be held on the first Monday in September of each year at the principal office of the Company at 12 o'clock noon at which the Board of Trustees shall be elected and the annual report of the President submitted and published and the Trustees chosen shall hold their office for one year thereafter, and it shall be the duty of the Secretary to give notice of the annual meeting of the stockholders by publication stating the time and place of meeting in some newspaper published and printed in Missoula, Montana, for at least ten days prior to such meeting.

Sec. 16. At all stockholders meetings the vote in person or by proxy of a majority in amount of all the stock of the company shall be necessary for an election or for the passage of any resolution, except one for the adjournment of any meeting to some other date. No notice shall be necessary for the holding of any adjourned meeting, and such adjourned meeting may be held at any time and place the stockholders present at the original meeting may determine.

Sec. 17. At all meetings of the stockholders each stockholder shall be entitled to as many votes as the number of shares held by him multiplied by the

number of Trustees to be chosen, and may cast all their votes for one candidate or distribute them as [269] he sees fit, and the person receiving the greatest number of votes shall be declared elected.

Sec. 18. Any stockholder may vote by proxy but such proxy shall be appointed by writing subscribed by such stockholder and filed with the Secretary at or before the time the vote is tendered. Such proxy may either be for such particular or for all meetings until revoked, and unless the contrary is stated therein the appointment of a proxy shall entitle the proxy to vote all meetings thereafter at which the stockholder is not present and until such proxy is cancelled or revoked by writing subscribed by the stockholder and filed with the secretary.

Sec. 19. The Secretary shall prepare and submit to every stockholders meeting, a certified list of all the stockholders of the Company and of those entitled to vote at such meetings and such list shall be "*prima facie*" evidence of the right to vote; and shall also produce the stock book whenever required by any stockholder so to do.

Sec. 20. No person is eligible to the office of Trustee unless he is a stockholder, and if he ceases to be a stockholder he ceases to be a Trustee.

Sec. 21. Any Trustee may hold any other office together with that of Trustee, and any two offices may be held by the same person (except those of President and Vice-President).

Sec. 22. A special meeting of the stockholders shall be called by the Secretary when so required, either by the Board of Trustees or the holders of one-

third of all the stock. Notice of such meeting shall be delivered to, or mailed to the address of every stockholder so as to be received at least ten days previous to the day of such meeting, stating the time of such meeting, and the object thereof. If the Secretary shall neglect [270] to convene such meeting for one week after notice in writing so to do has been served upon him, any Trustee or stockholder may himself do so.

Sec. 23. The shares in the capital stock of the Company shall be represented by stock certificates signed by the President, and attested by the Secretary. All certificates shall be bound in a book and shall be issued in consecutive order therefrom, and shall be numbered and registered in the order in which they are issued, and on the stub of each issued shall be entered the name of the person owning the share therein represented with the number of shares and the date thereof, and the person receiving this certificate shall sign on such stub a receipt for the certificate issued to him. All certificates exchanged or returned to the Company shall be cancelled by the secretary and such cancelled certificates pasted in their original place in the stock book, and no new certificates shall be issued until the old certificate has been thus cancelled and returned to its original place in such stock book.

Sec. 24. If any certificate be accidentally destroyed the Board may, upon proof of such loss and destruction and the giving of a proper bond of indemnity to their satisfaction by the stockholder, authorize the issue of a new certificate as a duplicate

bearing the same number.

Sec. 25. The transfer of stock shall be made only upon the books of the Company by the holder in person, or by power of attorney duly executed and filed with the Secretary of the Company, and on surrender of the certificate or certificates [271] of such shares, but no transfer shall be valid until the same has been entered upon the Books of the Company, and the party transferring said stock shall have made good all claims to the Company against him in person or against the shares of stock so held by him unless by consent of the Trustees. Every stockholder and Transferee shall furnish the Secretary with an address at which notices of meetings or other matters may be served upon or mailed to him and in default shall not be entitled to service of such notice.

Sec. 26. The stock book of the Company shall be kept by the Secretary in such a manner as to show intelligently the original stockholders their respective shares, the amount paid and the amounts due thereon, and all transfers thereof.

Sec. 27. The stock book, stock certificate book as well as all other books of the Company shall be subject to the inspection at all reasonable hours to any stockholder.

Sec. 28. The Secretary shall also keep a transfer book in which he shall register all transfers of stock, and the names and addresses of the transferees. Such transfer book shall be closed for ten days previous to and on the day of the annual meeting of the stockholders.

Sec. 29. The said Missoula Mercantile Company shall begin to take stock of all their goods and property (on the first) of January of each year, and a report of the same made to all the stockholders.

Altered.
See page 24. Sec. 30. Dividends must be declared and paid to the stockholders on the First day of February of each year, after the stock had been taken, to the full amount of the net profits, provided [272] the net profits do not exceed ten (10) per cent of the capital stock. In the event of an excess of the net profits over Ten (10) per cent of the Capital Stock the said Company shall declare a further dividend to the full amount of the net profits to be paid at the option of said Trustees *pro rata* in Bonds of said Company bearing interest at the rate of seven (7) per cent per annum, payable not less than one year from date and to run not longer than five years.

The erasure of the words "Upon a vote of a majority of the Trustees" on lines ten (10) and eleven (11) Section thirty (30) was made before the adoption of these By-Laws.

A. B. HAMMOND—President,
JNO. M. KEITH—Secretary.

Sec. 31. At any stockholders meeting after the President's report to the stockholders has been made of the preceding year's business and it is found that the net profits do not exceed Five (5) per cent of the Capital Stock a majority of the stockholders may demand that the business of said Missoula Mercantile Company shall be closed out under the management of the Board of Trustees and as they may deem best, but should the remaining stockholders desire to continue the business they may do so upon purchasing the stock held by the stockholder or stockholders wishing to sell their said shares at their par value.

Sec. 32. No deed, instrument or contract of any description purporting to be made on behalf of the Company, except in relation to the ordinary routine of the business of the company and except as provided in section 12 of these By-Laws shall be valid unless authorized by the Board of Trustees, and no instrument [273] shall be deemed to have been duly executed on behalf of the Company unless signed by the President and attested by the Secretary with seal.

Sec. 33. A monthly statement of the preceding month's business shall be furnished to each stockholder holding not less than one hundred (100) shares of stock if called for.

Sec. 34. These By-Laws shall be altered or amended only by the unanimous vote of all the Trustees at a regular meeting of the stockholders called for that purpose.

Upon motion of J. M. Keith the foregoing By-Laws were adopted and the Committee discharged.

There being no further business the meeting adjourned to meet again at 9 o'clock A. M. on the 20th inst.

A. B. HAMMOND, President.

JOHN M. KEITH, Secretary.

Missoula, Montana, August 20th, 1885,

9 o'clock A. M.

Pursuant to adjournment the Board of Trustees of the Missoula Mercantile Company met. There being present, President A. B. Hammond, Vice-President R. A. Eddy, John M. Keith and Charles H. McLeod.

Messrs. Eddy Hammond & Co. came before said

meeting and made an Exhibit of certain goods, wares, merchandise, real estate, Book Accounts, notes, etc., and offered to sell the same to the Missoula Mercantile Company at the price of Three hundred and thirty one thousand and Nine hundred and Seventy one 14/100 (331971.14) dollars, after full discussion and examination [274] the said Board agreed to and hereby does purchase from said Eddy Hammond & Co. their business, goodwill, goods, wares, merchandise, Book of Accounts, Notes, Real Estate, etc., at the said price of Three hundred and thirty one thousand Nine hundred Seventy-one 14/100 (\$331,971.14) dollars, and paying thereon the sum of Two hundred and fifty thousand (\$250,000.00) dollars, and the balance of said purchase price to be paid by the said Missoula Mercantile Company assuming the indebtedness of said Eddy Hammond & Co. to the various parties which it hereby agrees and obligates itself to pay, and to save the said Eddy Hammond & Co. harmless on account of such indebtedness, in the sum of Eighty one thousand Nine hundred and Seventy-one 14/100 (\$81,971.14) dollars, Eddy Hammond and Co. proceeding to make good and sufficient deed of all said Real Estate to the Missoula Mercantile Company, and will deliver to its proper officers the possession of all of said property, books, notes, accounts, etc., hereinbefore purchased. The following being a statement presented to the meeting:

“Statement of Property sold to the Missoula Mercantile Company by Eddy Hammond & Co.

August 20th, 1885.

Real Estate.....	\$ 43000.00
D. Goods Mdse.....	41518.77
Grocery Mdse.....	18553.37
Hdwe. Mdse.....	28848.98
Bills Receivable.....	27774.33
Store Furniture.....	2000.00
Cash with H. B. Claflin & Co....	9142.00
Sundry account.....	161133.69

 \$33197.14''

[275]

Upon motion of Charles H. McLeod the itemized statement of sundry accounts purchased and the liabilities assumed by said Missoula Mercantile Company was ordered filed with the secretary.

The President then announced that he had made the following appointment subject to the approval of the Trustees—viz.: Manager, Charles H. McLeod, and for Secretary and Treasurer John M. Keith, when upon motion of R. A. Eddy the appointments were confirmed.

There being no further business before the meeting it was adjourned.

A. B. HAMMOND, President.

JOHN M. KEITH, Secretary.

Missoula, Montana, August 22, 1885.

A meeting of the Board of Trustees of the Missoula Mercantile Company was held on this day at the office of said Company, at 12 o'clock noon, there being present Mr. President, R. A. Eddy, John M. Keith, and Edward L. Bonner.

Messrs. Eddy Hammond and Co. came before said meeting and made an Exhibit of certain goods, wares, merchandise, Real Estate, Book accounts, Notes, and Building in Stevensville, Montana, known as their Stevensville Store and offered to sell the same to the Missoula Mercantile Company at the price of Eleven Thousand Seven hundred and three 10/100 (\$11,703.10) [276] dollars, and after full consideration of the matter the said Board agreed to and hereby does purchase from said Eddy Hammond & Co. their business, goodwill, Goods, Wares, Merchandise, Books of accounts, Notes, Real Estate, Building, etc., at Stevensville at the said price of Eleven Thousand Seven hundred and three 10/100 (\$11,703.10) dollars, and paying thereon the sum of \$1,416.60 and the balance of said purchase price to be paid by said Missoula Mercantile Company assuming the indebtedness of said Eddy Hammond and Co. Stevensville Store to the various parties, which it hereby obligates itself to pay and to save the said Eddy Hammond & Co. harmless on account of such indebtedness in the sum of Ten Thousand Two Hundred and Eighty-six 50/100 (\$10,286.50) dollars. Eddy Hammond & Co. proceeding to make good and sufficient deed for said Real Estate to said Missoula Mercantile Company, and to deliver to its proper officers the possession of all of said property books, notes, accounts hereinbefore purchased. The following being a summary of the statement of the property sold to the Missoula Mercantile Company by

Eddy Hammond & Co., Stevensville, Aug. 22/85.

Book Accts., Merchandise, Bills Rec., etc. . . \$10,286.50

Real Estate and Building 1,416.60

\$11,703.10

Upon motion the President ordered that the Exhibit presented by Eddy Hammond & Co. be filed with the secretary for future reference.

There being no further business, the meeting adjourned.

A. B. HAMMOND, President.

JOHN M. KEITH, Secretary. [277]

Missoula, Montana, November 20th, 1885.

Pursuant to a notice published in the "Missoulian" newspaper and according to the by-laws the first meeting of the stockholders of the Missoula Mercantile Company was held at the office of said company at Missoula, Montana, on Friday, November 20th, 1885, at 12 o'clock Noon; there being present A. B. Hammond, R. A. Eddy, J. M. Keith, C. H. McLeod, G. T. Scully, Mrs. A. B. Hammond by proxy, Mrs. R. A. Eddy by proxy, and Edwina C. Hammond, Florence Hammond, Richard E. Hammond, Leonard C. Hammond, by their guardian, A. B. Hammond.

The meeting was called to order by the President and J. M. Keith was duly elected Secretary of the meeting.

On motion of R. A. Eddy the following preamble and resolution was adopted: "Whereas the three months having expired during which the Trustees named in the certificate of incorporation are by law to manage the affairs of the company, therefore be it

resolved: That the affairs and management with the subscription books and assets be turned over to the stockholders."

Whereupon the following motion was unanimously carried: That the stockholders of the Missoula Mercantile Company do now proceed to elect a Board of six Trustees to manage its affairs until the next regular annual meeting or until their [278] successors shall be elected and qualified. Whereupon the stockholders proceed to cast their ballots for the six Trustees, and upon the ballots being counted the tellers announced that the following persons had received a majority of the votes cast and are duly elected Trustees of said company to manage its affairs until the regular annual meeting of stockholders, viz.:

E. L. Bonner.

J. M. Keith.

R. A. Eddy.

C. H. McLeod.

A. B. Hammond.

G. T. Scully.

There being no further business before the meeting it adjourned.

A. B. HAMMOND, President.

JNO. M. KEITH, Secretary.

Missoula, Montana, November 20th, 1885.

A meeting of the first Board of Trustees was held at the office of the Missoula Mercantile Company at Missoula, Mt. on Friday, Nov. 20th, 1885, at 2 o'clock P. M., there being present Andrew B. Hammond, Richard A. Eddy, John M. Keith, Charles H. McLeod and George T. Scully.

Upon motion Andrew B. Hammond took the chair and J. M. Keith was duly elected Secretary *pro tempore*.

The chairman announced that the first business before the meeting was the election of one President and one Vice-President. [279] Whereupon the Trustees proceeded to cast their ballots for President and Vice-President, and after the count of the ballots the tellers announced that Edward L. Bonner had received five (5) votes for President and Andrew B. Hammond had received five (5) votes for Vice-President and upon motion they were declared duly elected.

In the absence of the President, the Vice-President appointed the following Executive Committee of the Board of Trustees in accordance with By-law No. 13, viz.: A. B. Hammond, C. H. McLeod and J. M. Keith and upon motion of R. A. Eddy the Board of Trustees confirmed the appointment of said Executive Committee.

In the absence of the President, the Vice-President appointed Charles H. McLeod, Manager, John M. Keith, Secretary and John M. Keith, Treasurer. When upon motion of G. T. Scully the appointments named above were confirmed by the Board of Trustees.

There being no further business before the meeting it was adjourned.

A. B. HAMMOND, Vice-President.

JNO. M. KEITH, Secretary.

Missoula, Montana, August 31, 1886.

Pursuant to notice given to each of the Trustees there was a meeting of the Trustees of the Missoula Mercantile Company held at the office of said company this date at 2:30 o'clock P. M.: All of the Trustees being present.

Edward L. Bonner, President, occupied the chair, and [280] stated the object of the meeting, whereupon Richard A. Eddy offered the following preamble and resolution: Whereas it appears that certain of the By-Laws of this company do not tend to the promotion of the best interests of the company: Be it therefore Resolved that Sections Nos. 3-4-11-13 and 30 of said By-Laws be altered and amended to read as follows:

Sec. 3. At the same meeting of said Board at which the President and Vice-President are elected, the President shall appoint, subject to the approval of the Board, a Secretary and a Treasurer.

Sec. 4. In addition to the above officers there shall also be a manager, who shall be appointed by the President, subject to the approval of the Board of Trustees.

Sec. 11. The salaries of the President, Vice-President, Secretary, Treasurer, and **Manager, and** all subordinate agents shall be fixed by the President, subject to the approval of the Board of Trustees.

Sec. 13. There shall be selected from the Trustees an Executive Committee composed of three persons who shall be named by the President, subject to the approval of the Board of Trustees, whose duty it shall be, in the absence of regular meetings of the Board, to perform all the duties, and do all things that might be done by the full Board when in regular session, and the President of this Company shall be ex-officio Chairman of said Executive Committee.

Sec. 30. Dividends must be declared and paid to the stockholders [281] on the first day of Feb-

ruary of each year, after the stock has been taken, to the full amount of the net profits, provided the net profits do not exceed ten (10) per cent of the Capital Stock. In the event of an excess of the net profits over ten (10) per cent of the Capital Stock, the said Company, at the option of the Trustees, may declare a further dividend to the full amount of the net profits, to be paid at the option of said trustees at any and such times and in any and such amounts, with interest at the rate of seven (7) per cent per annum, within one (1) year from date of declaration.

Upon motion of John M. Keith, the Resolution of R. A. Eddy was adopted unanimously—all of the Trustees voting Aye.

There being no further business before the Board, the meeting adjourned.

EDWARD L. BONNER,
President.

JOHN M. KEITH,
Secretary.

Missoula, M. T., September 6, 1886.

Pursuant to notice published in the "Missoula County Times" newspaper, and in accordance with the By-laws, the annual meeting of the Stockholders of the Missoula Mercantile Company held this day at the office of the Company at twelve o'clock noon, there being present Andrew B. Hammond, R. A. Eddy, C. H. McLeod, J. M. Keith, T. G. Hatheway and G. T. Scully, Mrs. Florence Hammond by proxy, Mrs. Edwinna Eddy by proxy, and Edwinna C. Hammond, Florence Hammond, Richard E. Hammond, and Leonard C. Hammond

by their guardian Andrew B. Hammond.

In the absence of the President, the Vice-president called the meeting to order, when J. M. Keith was appointed Secretary. [282]

The Vice-president presented the Balabce Sheet in lieu of his annual report which was accepted and ordered filed.

The Vice-president then announced that the first business before the meeting was the election of six Trustees to manage the affairs of the Company until the next regular annual meeting or until their successors shall be elected and qualified: Whereupon the stockholders proceeded to cast their ballots for the six Trustees, and upon the ballots being counted the Tellers announced that the following persons had received a majority of the votes cast, and are duly elected Trustees of the Missoula Mercantile Company for the ensuing year, viz.:

E. L. Bonner.

J. M. Keith.

R. A. Eddy.

C. H. McLeod.

A. B. Hammond.

G. T. Scully.

There being no further business before the stockholders the meeting adjourned.

A. B. HAMMOND,

Vice-president.

JOHN M. KEITH,

Secretary.

Missoula, Mt., September 6th, 1886.

A meeting of the Trustees elected this day was held at the office of the Missoula Mercantile Company at 2:30 o'clock P. M. There being present A. B. Hammond, R. A. Eddy, C. H. McLeod, John M. Keith

and George T. Scully.

Upon motion Andrew B. Hammond took the chair, and [283] John M. Keith was elected Secretary of the Meeting.

The Chairman announced the first business before the meeting was the election of one President and one Vice-president. The Trustees thereupon proceeded to cast their ballots for President, and after the ballots had been counted, the tellers announced that Edward L. Bonner had been elected President. The Trustees then cast their ballots for Vice-president, and when said ballots had been counted, the tellers announced that Andrew B. Hammond had been duly elected Vice-president.

In the absence of the President, the Vice-president appointed the following-named persons an Executive Committee in accordance with By-law No. 13, viz.: A. B. Hammond, C. H. McLeod, and J. M. Keith, and upon motion of G. T. Scully, the Board of Trustees confirmed the appointment of said Executive Committee.

In the absence of the President, the Vice-president appointed Charles H. McLeod, Manager, John M. Keith, Secretary, and John M. Keith, Treasurer, and upon motion of R. A. Eddy, said appointments were confirmed by the Board of Trustees.

There being no further business before the meeting, it was adjourned.

A. B. HAMMOND,
Vice-president.
JOHN M. KEITH,
Secretary.

Missoula, M. T., September 5th, 1887.

Pursuant to notice published in the "Missoulian" newspaper, and in accordance with the by-laws of the Company, the annual meeting of the stockholders of the Missoula Mercantile Company was held this day at 12 o'clock noon, there [284] being present Andrew B. Hammond, Richard A. Eddy, C. H. McLeod, John M. Keith, T. G. Hathaway, George T. Scully, Mrs. Florence Hammond by proxy, Mrs. Edwinna Eddy by proxy, Edwinna C. Hammond, Florence Hammond, Richard E. Hammond, and Leonard C. Hammond by their guardian, A. B. Hammond.

In the absence of the President, the meeting was called to order by the Vice-president and John M. Keith was elected Secretary of the meeting.

The Vice-president presented the Balance Sheet showing the Company's standing in lieu of the President's annual report, which was accepted and ordered filed.

The Vice-president then announced that the first business before the meeting was the election of six Trustees to manage the affairs of the Company until the next regular annual meeting of the stockholders, or until their successors shall be elected and qualified. Whereupon the stockholders proceeded to cast their ballots for the six Trustees, and upon the ballots being counted the Tellers announced that the following-named persons had received a majority of the votes cast and are duly elected Trustees of the Mis-

soula Mercantile Company for the ensuing year, viz.:

E. L. Bonner.

John M. Keith.

R. A. Eddy.

Charles H. McLeod.

A. B. Hammond.

Thomas G. Hathaway.

There being no further business before the stockholders' meeting it was adjourned.

A. B. HAMMOND,

Vice-president.

JOHN M. KEITH,

Secretary *pro tem*. [285]

Missoula, M. T., September 5, 1887.

A meeting of the Trustees of the Missoula Mercantile Company, elected at the Stockholders' meeting held this day, was held at the office of the Company at two o'clock P. M. There being present A. B. Hammond, R. A. Eddy, C. H. McLeod, John M. Keith and T. G. Hatheway.

Upon motion Andrew B. Hammond took the chair, and John M. Keith was elected Secretary of the meeting.

The Chairman announced the first business before the meeting was election of a President and a Vice-President of the Board of Trustees. Whereupon the Trustees proceed to cast their ballots, and after being counted, the Chairman announced that Edward L. Bonner had been elected President. The Trustees then cast their ballots for Vice-president, and after being counted, the Chairman announced that A. B. Hammond had received a majority of the votes cast.

In the absence of the President, the Vice-president

appointed the following-named persons as an Executive Committee in accordance with By-law No. 13, viz.: A. B. Hammond, C. H. McLeod, and John M. Keith, and upon motion of R. A. Eddy, the Board of Trustees approved of said appointments.

In the absence of the President, the Vice-president appointed C. H. McLeod Manager, John M. Keith, Secretary, and John M. Keith, Treasurer, and upon motion of T. G. Hatheway confirmed said appointments.

There being no further business before the meeting, it was adjourned.

A. B. HAMMOND,
Vice-president,
JOHN M. KEITH,
Secretary. [286]

STOCKHOLDERS' MEETING.

Notice of meeting of stockholders of Missoula Mercantile Company. Notice is hereby given that there will be a meeting of the stockholders of the Missoula Mercantile Company at the office of said Company, in the town of Missoula, Missoula County, Montana, between the hours of 10:00 o'clock A. M. and 2:00 o'clock P. M., on the twenty-sixth day of January, 1888, for the purpose of voting on the proposition to increase the capital stock of said Company to three hundred thousand dollars.

This 19th day of December, 1887.

A. B. HAMMOND,
JOHN M. KEITH,
C. H. McLEOD,
THOMAS G. HATHAWAY,
R. A. EDDY,

Trustees.

Office of Missoula Mercantile Company.

Missoula, Montana, January 26th, 1888.

The stockholders of Missoula Mercantile Company met at the office of said company in the town of Missoula on this day pursuant to a notice published for six successive weeks prior to said meeting to wit, from the 21st day of December, 1887, to the 25th day of January, 1888, in the Missoula County "Times," a weekly newspaper published in the town and county of Missoula, and pursuant also to notices duly and [287] regularly mailed to the stockholders of this company postage prepaid thereon. The meeting was called to order and Charles H. McLeod was on motion chosen Chairman and John M. Keith Secretary. On a call it was ascertained that all the stockholders were represented. The absent stockholders being represented by written proxies which were duly filed with the Secretary.

The Chairman stated the object of the meeting as contained in the notices thereof to be to consider the proposition to increase the capital stock of the Company to the sum of three hundred thousand dollars being an increase of five hundred shares of the par value of one hundred dollars each. The Chairman further announced that the meeting would proceed

to vote on said proposition in the usual way by ballot. That each stockholder was entitled to one vote for each share of stock held or represented by him. That those in favor of the increase should vote the number of shares of stock held or represented by them "yes." That those opposed the number of shares of stock held or owned by "no." The Chairman then appointed A. B. Hammond and Thomas G. Hathaway, Tellers.

The vote being cast and canvassed the Chairman announced that each share of stock had been voted in favor of increasing the capital stock to the amount named in the notices and it was further ordered that the Chairman make a statement as required by law of the proceedings of the meeting. Capital stock paid in, liabilities of the company and amount to which the capital stock is increased and file same with the County Recorder of Missoula County. And it was ordered that the Trustees do and they are hereby authorized to open the books [288] of this Company for the purpose of receiving subscriptions for the five hundred additional shares of stock at the par value of one hundred dollars each.

There appearing no further business the meeting adjourned.

C. H. McLEOD,
Chairman.

CHAS.

Secretary.

The following is a statement made by the Chairman of the meeting of the stockholders, a copy of

which was filed with the County Recorder of Missoula County:

Office of Missoula Mercantile Company.

Missoula, Montana, January 26th, 1888.

At a meeting of the stockholders of Missoula Mercantile Company held pursuant to notices given and published as required by law and at which all the stockholders were represented. Convened and held for the purpose of considering the proposition to increase the capital stock of said Company to Three hundred thousand dollars.

Said proposition being submitted all the stock of the Company was voted in favor of the proposition.

The affairs of said Company are as follows:

Capital stock actually paid in.....	250,000.00
Liabilities of Company	15,000.00
Amount to which stock is increased.....	300,000.00

In witness whereof I have hereunto set my hand and seal this the 26th day of January, A. D. 1888.

Signed—CHARLES H. McLEOD,
Chairman of Meeting of Stockholders.

Countersigned:

JOHN M. KEITH,

Secretary of Meeting of Stockholders. [289]

Which statement was verified and acknowledged as required by law.

Office of Missoula Mercantile Co.

Missoula, Montana,———, 1888.

A meeting of the trustees of Missoula Mercantile Company convened and held at the office of said Company in the town of Missoula pursuant to a call of

the Vice-president. Present, A. B. Hammond, Vice-president, presiding, John M. Keith, Secretary and Charles H. McLeod.

The President laid before the Board the proceedings of the stockholders at a meeting held on the 26th inst., and announced that in accord with the directions of said Stockholders' meeting, the books were opened for subscription for the additional five hundred shares of stock added to the Capital stock of this Company by direction of the stockholders. And that said stock could be taken at its par value of one hundred dollars per share.

Whereupon said additional shares of stock were subscribed for as follows:

Mrs. Edwinna M. Eddy.....	120	shares
Mrs. Carrie L. Bonner.....	160	"
Richard A. Eddy.....	110	"
Edward L. Bonner	70	"
I. S. G. Van Wart.....	20	"
Harry T. Van Wart.....	20	"

Total, 500 "

The President then announced that the whole number of additional shares of the stock had been subscribed for, and the Secretary was directed to issue certificates to said parties respectively for the number of shares of stock subscribed for as above. [290]

Missoula, Montana, September 3, 1888.

Pursuant to notice published in the "Missoulian" newspaper, and in accordance with the By-Laws of the Company, there was a meeting of the stockholders of the Missoula Mercantile Company, held this

day at 12 o'clock noon in the office of the Company at Missoula. There being present E. L. Bonner, A. B. Hammond, R. A. Eddy, J. M. Keith, C. H. McLeod, H. C. Keith, T. G. Hathaway, Mrs. Florence Hammond by proxy, Mrs. E. M. Eddy by proxy, Mrs. Carrie L. Bonner by proxy, Edwinna C. Hammond, Florence Hammond, Richard E. Hammond and Leonard C. Hammond by their guardian, A. B. Hammond.

Upon motion the chair was taken by E. L. Bonner, president of the company, and H. C. Keith was elected Secretary pro tem.

The President presented the balance sheet on the first day of September, 1889, in lieu of his annual report, which Balance Sheet showed fully the company's standing, and which after examination by the stockholders present, was accepted and ordered filed.

The President then announced the next order of business was the election of six Trustees to manage the affairs of the company until the next annual meeting of the stockholders, or until their successors shall be elected and qualified.

The President then appointed J. M. Keith and C. H. McLeod as Tellers, and the stockholders proceeded to cast their ballots; after all the votes had been cast and the Tellers counted the Ballots, the following report was read:

Missoula, Mt. Sept. 3, 1888.

To the stockholders of Miss. Mer. Co., [291]
Missoula.

Gentm: We, the undersigned having been appointed tellers of an election for six trustees for the

Missoula Mercantile Company, respectfully report the vote cast as follows:

E. L. Bonner,	Received	2520	Votes
A. B. Hammond,	"	2520	"
R. A. Eddy,	"	2520	"
John M. Keith,	"	2520	"
C. H. McLeod,	"	2520	"
Thomas G. Hathaway,	"	2520	"

and would certify that the above six persons have been duly elected Trustees of the Missoula Mercantile Company.

Respectfully,

(Sd.) J. M. KEITH.

(Sd.) C. H. McLEOD.

After the above notice was read by the Secretary, the President announced that E. L. Bonner, A. B. Hammond, C. H. McLeod, R. A. Eddy, J. M. Keith and T. G. Hatheway were duly elected Trustees.

There being no further business before the meeting, it was adjourned.

A. B. HAMMOND, President.

H. C. KEITH, Secretary *pro tem*.

Missoula, Mont., September 3rd, 1888.

Pursuant to call of the President, there was a meeting of the Trustees elected this day, held at the office of the Missoula Mercantile Company in Missoula, at 3 o'clock P. M. There being present, E. L. Bonner, Presdt., A. B. Hammond, R. A. Eddy, J. M. Keith, and Chas. H. McLeod. [292]

The chair was occupied by E. L. Bonner, President of the Company, and J. M. Keith was elected Secretary of the meeting.

The chairman announced the first business before the Board of Trustees was the election of one President and one Vice-President. The Trustees then proceeded to cast their votes for President, and after the ballots had been counted, the chairman announced that Edward L. Bonner had received a majority of the votes cast for President. The Trustees then proceeded to cast their votes for Vice-President, which after being counted the chairman announced that Andrew B. Hammond had received a majority of the votes cast for Vice-President, and declared E. L. Bonner and A. B. Hammond duly elected President and Vice-President, respectively.

The President then announced that he had appointed as an Executive Committee in accordance with By-Law No. 13 A. B. Hammond, C. H. McLeod and J. M. Keith, which upon motion of R. A. Eddy was approved by the Board of Trustees.

The President then appointed Chas. H. McLeod, Manager, and H. C. Keith Secretary, and H. C. Keith Treasurer of the Company, which appointments were upon motion confirmed by the Board of Trustees.

The meeting then adjourned.

A. B. HAMMOND, President.

Secretary *pro tem*.

Missoula, Mont., September 2d, 1889.

Pursuant to notice published in the "Gazette" newspaper, and in accordance with the By-Laws of this Company, there was a meeting of the stockholders of the Missoula Mercantile Company, held at the office of said Company, this [293] day at 12 o'clock noon. There being present, E. L. Bonner, A.

B. Hammond, J. M. Keith, C. H. McLeod, H. C. Keith, T. G. Hatheway, Mrs. Florence Hammond by proxy, Mrs. Carrie S. Bonner by proxy, Edwinna C. Hammond, Florence Hammond, Richard E. Hammond, and Leonard C. Hammond by their guardian A. B. Hammond.

Upon motion the chair was taken by E. L. Bonner, President of the Company, and H. C. Keith was appointed Secretary *pro tem*.

The President presented to the meeting the trial balance sheet made on the first day of September, 1889, which fully showed the standing of the Company on that date, and which after examination was approved by the stockholders present, and was ordered filed.

The President then announced the next business before the meeting was the election of six (6) Trustees to manage the affairs of the company until the next annual meeting, or until their successors shall have been elected and qualified.

The President appointed J. M. Keith and T. G. Hatheway as Tellers, and the Tellers proceeded to cast their ballots. After all the votes had been cast, and the tellers had counted the ballots, the following report was read:

Missoula, M. T., Sept. 2d, 1889.

To the Stockholders of Miss. Mer. Co., Missoula.

Gentm.: We, the undersigned, having been appointed Tellers of an election for Six Trustees of the Missoula Mercantile Company, held this day, respectfully report the vote cast as follows: [294]

E. L. Bonner	Received	1665	Votes.
A. B. Hammond	"	1665	"
R. A. Eddy	"	1665	"
C. H. McLeod	"	1665	"
J. M. Keith	"	1665	"
T. G. Hatheway	"	1665	"

and would certify that the above-named six persons have been duly elected Trustees of the Missoula Mercantile Company.

(Sd.) J. M. KEITH.

(Sd.) T. G. HATHEWAY.

After the reading of the above communication by the Secretary, the President announced that E. L. Bonner, A. B. Hammond, R. A. Eddy, J. M. Keith, C. H. McLeod, and T. G. Hatheway had been elected Trustees.

There being no further business before the meeting it was adjourned.

A. B. HAMMOND, Chairman.

H. C. KEITH, Secretary *pro tem*.

Missoula, Mont., Sept. 2nd, 1889.

Pursuant to call of the President there was a meeting of the Trustees elected this day, held at the office of the Missoula Mercantile Company, at 2:30 o'clock P. M. There being present E. L. Bonner, A. B. Hammond, J. M. Keith, C. H. McLeod, and T. G. Hatheway.

The chair was occupied by President E. L. Bonner and J. M. Keith was appointed Secretary of the meeting.

The Chairman then announced the first business before the meeting was the election from the Trus-

tees of a President and one Vice-President. The Trustees then proceeded to cast their ballots for President, and after all of the [295] votes had been cast and counted, the chairman announced that Andrew B. Hammond had received a majority of all the votes cast. The Trustees then proceeded to cast their ballots for one Vice-President, and after the votes had all been cast and the ballots counted, the Chairman announced that Charles H. McLeod had received a majority of all the votes cast for Vice-President, and announced that A. B. Hammond had been duly elected President, and Charles H. McLeod had been duly elected Vice-President of the Missoula Mercantile Company.

The President then announced that he had appointed as an Executive Committee A. B. Hammond, C. H. McLeod, and J. M. Keith, which appointment, upon motion of T. G. Hatheway, was confirmed by the Board of Trustees.

The President then announced that he had made the following appointments, viz.: C. H. McLeod, Manager; Alfred Merz, Secretary and H. C. Keith, Treasurer, which appointments, upon motion of J. M. Keith, were confirmed by the Board of Trustees.

There being no further business before the meeting it was adjourned subject to call of the President.

A. B. HAMMOND, President.

J. M. KEITH, Secretary *pro tem*.

Missoula, Montana, May 1st, 1890.

Pursuant to call of the President, there was a special meeting of the Trustees of the Company held this day at their office at 2 o'clock P. M. There being present, A. B. Hammond, C. H. McLeod, John

M. Keith, and Thos. G. Hatheway.

The chair was occupied by the President, A. B. Hammond and John M. Keith was appointed Secretary of the meeting. [296]

The President then announced that the first business before the meeting was on the resignation of Alfred Merz as Secretary of the Company, to take effect this day, which resignation was on motion of John M. Keith, duly accepted.

The President then announced that he had appointed Gust Moser as Secretary of the Company, to fill the vacancy caused by the resignation of Alfred Merz which appointment of motion of C. H. McLeod was confirmed by the Board of Trustees.

There being no further business before the meeting it was adjourned subject to call of the President.

A. B. HAMMOND, President.

J. M. KEITH, Secretary *pro tem*.

NOTICE.

To the Stockholders of the Missoula Mercantile Co.

You are hereby notified that there will be a meeting of the stockholders of the Missoula Mercantile Company held at the office of the Company in the town of Missoula, on Monday, the 21st day of July, 1890, at which meeting will be submitted to the stockholders the proposition to increase the capital stock of said Company from \$300,000 to \$600,000. By order of the Board of Directors.

A. B. HAMMOND, President.

Attest: GUST MOSER, Sec'y.

Missoula, Mont., June 4, 1889.

Office of Missoula Mercantile Co.

Missoula, Montana, July 21st, 1890.

Stockholders of Missoula Mercantile Co. met [297]. at the office of said Company, in the City of Missoula on this day, pursuant to a notice published for six successive weeks prior to said meeting, to wit, June 4th, 1890, to the 21st day of July, 1890, in the "Missoula Gazette," a daily newspaper published in the City and County of Missoula, and pursuant also to notices duly and regularly mailed to the stockholders of this Company postage prepaid thereon.

The meeting was called to order and Charles H. McLeod was on motion chosen Chairman and Gust. Moser, Secretary.

On a call it was ascertained that all the stockholders were represented. The absent stockholders being represented by written proxies, which were duly filed with the Secretary.

The following named persons who are holding stocks of said Missoula Mercantile Co., under contract, were also present in person: Thos. C. Marshall, Fred T. Sterling; Tylar B. Thompson; C. A. Barnes, J. M. Price; J. P. Menard; Wm. Mentrumb; Dan Ross, and Tyler Worden. The Chairman stated the object of the meeting as contained in the notices thereof, to be to consider the proposition to increase the capital stock of the Company to the sum of Six Hundred Thousand Dollars, being an increase of Three Thousand Shares of the par value of One Hundred Dollars each.

The Chairman further announced that the meeting would proceed to vote on said proposition in the usual way, by ballot. That each stockholder was entitled

to one vote for each share of stock held by him. That those in favor of the increase should vote the number of shares of stock held or represented by them "Yes." That those opposed, the number of shares of stock held or represented by them "No." [298] The Chairman then appointed John M. Keith and Harry T. Van Wart Tellers. The vote being cast and canvassed, the Chairman announced that each share of stock had been voted in favor of increasing the Capital Stock to the amount named in the notices. All the persons holding stock under contract, voting in favor of increasing the stock.

It was further ordered that the Chairman make a statement as required by law, of the proceedings of the meeting; Capital Stock paid in; Liabilities of the Company, and amount to which the Capital Stock is increased, and file same with the County Recorder of Missoula County.

The Chairman then announced that there was on hand and to the credit of Undivided Profits the sum of Three Hundred Thousand Dollars. It was then ordered by a unanimous vote of all the stockholders, and of the persons holding stock under contract, that a Dividend be declared to the full amount of said Undivided Profits, to wit, Three Hundred Thousand Dollars, and that the same be paid in stock of the Company, to wit, the additional Three Thousand shares to which the Capital Stock of the Company has been increased.

There being no further business the meeting adjourned.

CHARLES H. McLEOD, Chairman.

GUST. MOSER, Secretary.

The following is a statement made by the Chairman of the meeting of the stockholders, a copy of which was filed with the County Recorder of Missoula County:

Office of Missoula Mercantile Co.

Missoula, Montana, July 21st, 1890.

At a meeting of the stockholders of the Missoula Mercantile Co. held pursuant to notices given and published as required by law, and at which all the stockholders were represented, [299] convened and held for the purpose of considering the proposition to increase the Capital Stock to Six Hundred Thousand Dollars.

Said proposition being submitted, all of the stock of the Company was voted in favor of the proposition.

The Capital Stock of the Com-

pany actually paid in is. 300,000.00

The Amount of Liabilities of the

Co. 50,000.00

Capital Stock is increased to. . . . 600,000.00

In witness whereof, I have hereunto set my hand this the 21st day of July, A. D. 1890.

CHARLES H. McLEOD, Chairman.

Countersigned: GUST. MOSER, Secretary.

Which statement was verified and acknowledged as required by law.

Missoula, Montana, September 1st, 1890.

Pursuant to notice published in the "Gazette" newspaper and in accordance with the By-Laws of this Company, there was a meeting of the stockholders of the Missoula Mercantile Company held at the

office of said Company, this day at 12 o'clock noon; there being present, E. L. Bonner, C. H. McLeod, T. G. Hatheway, John M. Keith and Harry T. Van Wart, in person, and R. A. Eddy, A. B. Hammond, Mrs. E. M. Eddy; Mrs. F. Hammond, Edwinna Hammond, Florence Hammond, Richard Hammond, Leonard Hammond, Mrs. Carrie S. Bonner, Harry C. Keith, and Bessie A. Bonner by proxy.

On motion the Chair was taken by C. H. McLeod, [300] Vice-President of the Company, and John M. Keith was appointed Secretary of the meeting.

The Vice-President presented to the meeting the Trial Balance Sheet made on the 1st day of September, 1890, which fully showed the standing of the Company that date, and which after examination was approved by the stockholders present, and was ordered filed.

The Vice-President then announced the next business before the meeting was the election of Six (6) Trustees to manage the affairs of the Company, until the next annual meeting, or until their successors shall have been elected and qualified. The Vice-President appointed E. L. Bonner and Harry T. Van Wart as Tellers and the Tellers proceeded to cast their ballots, after all the votes had been cast, and the Tellers had counted the ballots the following report was read:

Missoula, Monta., Sep. 1, 1890.

To the Stockholders of the Missoula Merc. Co.

Gents: We, the undersigned, having been appointed Tellers of an election for Six Trustees of the Missoula Mercantile Company held this day, respectfully report the vote cast as follows:

E. L. Bonner	Received	3000	Votes.
A. B. Hammond	"	3000	"
R. A. Eddy	"	3000	"
J. M. Keith	"	3000	"
C. H. McLeod	"	3000	"
T. H. Hatheway	"	3000	"

and would certify that the above-named six persons have been duly elected Trustees of the Missoula Mercantile Company.

(Sgd.) E. L. BONNER.

HARRY T. VAN WART. [301]

After the reading of the above communication by the Secretary, the Vice-president announced that E. L. Bonner, A. B. Hammond, R. A. Eddy, C. H. McLeod, J. M. Keith, and T. G. Hatheway, had been elected Trustees.

There being no further business before the meeting, it was adjourned.

C. H. McLEOD,

Chairman.

J. M. KEITH,

Secretary *pro tem*.

Missoula, Montana, September 5th, 1890.

Pursuant to call of the President, there was a meeting of the Trustees elected September 1st, 1890, held at the office of Missoula Mercantile Co., at 2 o'clock P. M. There being present A. B. Hammond, E. L. Bonner, C. H. McLeod and John M. Keith.

The chair was occupied by the President, A. B. Hammond, and John M. Keith was appointed Secretary of the meeting.

The chairman then announced the first business

before the meeting was the election from the Trustees of a President and one Vice-president. The Trustees then proceeded to cast their ballot for President, and after all the votes had been cast and counted, the chairman announced that Andrew B. Hammond had received a majority of the votes cast. The Trustees then proceeded to cast their ballot for one Vice-president, and after the votes had all been cast and counted, the Chairman announced that Charles H. McLeod had received a majority of all the votes cast for Vice-president, and announced that A. B. Hammond had been duly elected President and Charles H. McLeod had been duly elected Vice-president of the Missoula Mercantile Company. [302]

The President then announced that he had appointed as an Executive Committee A. B. Hammond, C. H. McLeod and John M. Keith which appointment on motion of E. L. Bonner was confirmed by the Board of Trustees.

The President then announced that he had made the following appointments, viz.: C. H. McLeod, Manager; Gust Moser, Secretary, and Harry C. Keith, Treasurer, which appointments upon motion of J. M. Keith were confirmed by the Board of Trustees.

There being no further business before the meeting it was adjourned subject to call of the President.

A. B. HAMMOND,

President.

J. M. KEITH,

Secretary *pro tem.*

Missoula, Montana, September 9th, 1890.

Pursuant to an order made by the stockholders of the Missoula Mercantile Co. on July 21st, 1890, declaring a Dividend of Three Hundred Thousand Dollars, payable in stock of the Company, there was this day issued to the stockholders as they appear on the books of the Company Three Thousand shares of the par value of One Hundred each as follows:

C. H. McLeod.....	840	shares
T. G. Hatheway.....	100	“
John M. Keith.....	102	“
Mrs Florence Hammond.....	300	“
Edwinna Hammond	50	“
Florence Hammond	50	“
Richard Hammond	50	“
Leonard Hammond	50	“
Harry T. Van Wart	20	”
Harry C. Keith.....	20	“

[303]

R. A. Eddy.....	265	“
A. B. Hammond.....	510	“
E. L. Bonner.....	34	“
Mrs. E. M. Eddy.....	223	“
Bessie A. Bonner.....	133	”
Mrs. Carrie S. Bonner.....	253	”

Total, 3000 “

GUST MOSER,

Secretary.

Missoula, Montana, September 7th, 1891.

Pursuant to notice published in the Gazette newspaper and in accordance with the By-Laws of this

Company, There was a meeting of the stockholders of the Missoula Mercantile Company held at the office of said Company, this day at 12 o'clock noon; there being present E. L. Bonner, A. B. Hammond, C. H. McLeod, John M. Keith, Thomas G. Hatheway and Harry T. Van Wart in Person, and R. A. Eddy, Edwinna M. Eddy, Mrs. F. A. Hammond, Edwinna Hammond, Florence Hammond, Richard Hammond, Leonard Hammond, Mrs. C. S. Bonner, Harry C. Keith and Bessie Bonner, by proxy.

On motion the chair was taken by A. B. Hammond, President of the Company, and John M. Keith was appointed Secretary of the meeting.

The President presented to the meeting the Trial Balance sheet made on the 1st day of September, 1891, which fully showed the Standing of the Company that date, and which after examination was approved by the stockholders present, and was ordered filed.

The President then announced the next business before the meeting was the election of six (6) trustees to manage the affairs of the Company until the next annual meeting or until [304] their successors, shall have been elected and qualified.

The President appointed Thomas G. Hatheway and Harry T. Van Wart as Tellers, and the stockholders then proceeded to cast their ballots. After all the votes had been cast and the Tellers had counted the ballots, the following report was read.

Missoula, Montana, September 7, 1891.

To the Stockholders of Missoula Merc. Co.

Gents: We the undersigned having been appointed

Tellers, of an election for Six (6) Trustees of the Missoula Mercantile Co., held this day respectfully report the vote cast as follows:

E. L. Bonner,	Received	6000	Votes.
A. B. Hammond,	"	6000	"
R. A. Eddy,	"	6000	"
C. H. McLeod,	"	6000	"
Thomas G. Hatheway,	"	6000	"
John M. Keith,	"	6000	"

and would certify that the above named six persons have been duly elected Trustees of the Missoula Mercantile Co., for the ensuing year.

(Signed) THOMAS G. HATHEWAY,
HARRY T. VAN WART.

After the reading of the above communication by the Secretary, the President announced, that E. L. Bonner, A. B. Hammond, R. A. Eddy, C. H. McLeod, Thomas G. Hatheway and John M. Keith had been elected Trustees for the ensuing year.

There being no further business before the meeting [305] it was adjourned.

A. B. HAMMOND, Chairman.

_____, Secretary.

Missoula, Mont. September 10th, 1891.

Pursuant to call of the President, there was a meeting of the Trustees elected September 7th, 1891, held at the office of the Missoula Mercantile Co., at 2 o'clock P. M. there being present A. B. Hammond, E. L. Bonner, C. H. McLeod, Thomas G. Hatheway, and John M. Keith.

The chair was occupied by the President A. B.

Hammond, and John M. Keith was appointed Secretary of the meeting.

The chairman then announced the first business before the meeting was the election from the Trustees of a President and one Vice-president.

The Trustees then proceeded to cast their ballot for President, and after all the votes had been cast, and counted, the chairman announced that Andrew B. Hammond had received a majority of the votes cast.

The Trustees then proceeded to cast their ballot for one Vice-president, and after the votes had all been cast and counted, the chairman announced that Charles H. McLeod, had received a majority of all the votes cast for Vice-president, and announced that Andrew B. Hammond had been duly elected President, and Charles H. McLeod, Vice-president of the Missoula Mercantile Company for the ensuing year.

The President then announced that he had appointed as an executive committee, Charles H. McLeod, John M. Keith, and [306] Thomas G. Hatheway, which appointment on motion of E. L. Bonner, was duly confirmed by the Board of Trustees.

The President then announced the following appointments, viz.: Charles H. McLeod, Manager, Gust. Moser, Secretary, and Harry C. Keith, Treasurer, which appointments were on motion of John M. Keith duly confirmed by the Board of Trustees.

There being no further business before the meeting it was adjourned subject to call of the President.

A. B. HAMMOND, President.

_____, Secretary.

NOTICE OF STOCKHOLDERS' MEETING.

To the Stockholders of the Missoula Mercantile Company:

You are hereby notified that there will be a meeting of the stockholders of the Missoula Mercantile Company, held at the office of the Company at the city of Missoula, on the 24th day of October, 1891, at which meeting will be submitted to the stockholders a proposition to increase the capital stock of said Company to the sum of One million two hundred thousand dollars.

Respectfully,

A. B. HAMMOND,
RICHARD A. EDDY,
CHAS. H. McLEOD,
THOMAS G. HATHEWAY,
JOHN M. KEITH,

Trustees.

Dated Missoula, Mont. Sept. 1, 1891.

Missoula, Mont. Oct. 24th, 1891.

A meeting of the stockholders of the Missoula Mercantile Company, assembled pursuant to a notice published in [307] the "Missoula Gazette," and signed by A. B. Hammond, Richard A. Eddy, Charles H. McLeod, Thomas G. Hatheway and John M. Keith, being a majority of all the Trustees of said Company, and dated Sept. 1st, 1891, calling together the stockholders of said Company to meet on this day, to consider a proposition to increase the Capital Stock from Six Hundred Thousand to One Million Two Hundred Thousand Dollars, a copy of said notice is attached to this page as a part of the

minutes of the proceedings of this meeting, A. B. Hammond, President, was present, called the meeting to order, read the notice, stated the objects as above, and directed the Secretary to call the roll of stockholders, which being done, it was ascertained, that the following stockholders were present in person, or duly represented by written proxy, which were exhibited, approved and directed to be filed with the Secretary, to wit:

R. A. Eddy, 530 shares; by A. B. Hammond, Attorney in Fact, Proxy.

Edwinna M. Eddy, 446 shares by A. B. Hammond, Attorney in Fact, Proxy.

A. B. Hammond, 1020 shares in person.

E. L. Bonner, 68 shares, in person.

C. H. McLeod, 1680 shares, in person.

T. G. Hatheway, 200 shares, in person.

John M. Keith, 204 shares, in person.

Mrs. F. A. Hammond, 600 shares, in person.

Edwinna Hammond, 100 shares, by A. B. Hammond, her Guardian.

Florence Hammond, 100 shares, by A. B. Hammond, her Guardian.

Richard Hammond, 100 shares, by A. B. Hammond, his Guardian.

Leonard Hammond, 100 shares, by A. B. Hammond, his Guardian. [308]

Mrs. C. S. Bonner, 506 shares in person.

Harry T. Van Wart, 40 shares in person.

Harry C. Keith, 40 shares in person.

Bessie Bonner, 266 shares by E. L. Bonner, her Guardian.

The President announced that all the stock of the Missoula Mercantile Co. being present or represented by proper accredited Proxy, the business before the meeting would next be, the consideration of the proposition for which the meeting was called, to wit: The increase of its Capital stock. Whereupon Mr. John M. Keith offered the following Preamble and Resolutions and moved their adoption namely:

Whereas, it is apparent that the business of the Missoula Mercantile Company has so increased and the volume thereof is of such magnitude as makes it absolutely necessary to increase its Capital stock, and

Whereas, to the end that the additional increased shares of stock may be speedily subscribed and paid for, so as not to cause any embarrassment or delay in raising the increase of funds necessary to carry on and profitably conduct the business of the said Company it is deemed advisable to divide the Capital stock of the said Company into three (3) classes, therefore:

Be it Resolved, that the Capital stock of the said Missoula Mercantile Company be and the same is hereby increased from the sum of Six Hundred Thousand (\$600,000.00) Dollars, to the sum of Twelve Hundred Thousand (\$1,200,000.00) Dollars, and

Be it further Resolved: that the said Capital stock be divided into twelve thousand (12000) shares of the par value of One hundred (\$100.00) Dollars, each, and

Be it further Resolved that the said shares of stock [309] be divided into three (3) distinct classes denominated as follows, to wit:

First Class to consist of Three Thousand shares, and called and designated "First Preferred stocks" on which an annual dividend of eight (8) per cent on the par value thereof shall be first paid out of the net profits or earnings of the business of the said Missoula Mercantile Company, to the holders thereof, which sum when so paid to the holders thereof, shall be in lieu of all further participation in any of the profits or earnings of the said Company up to the time of that settlement.

And the second class to consist of Three Thousand Seven hundred and Twelve shares, and called and designated "Second Preferred stock" on which an annual dividend of twelve (12%) per cent on the par value thereof, shall be, next thereafter, paid out of the net profits or earnings of said Company, to the holders thereof, should there be a sufficiency thereof, for that purpose, after paying the annual dividend on the "First Preferred stock" as aforesaid; which sum when so paid to the holders thereof, shall be in lieu of all further participation in any of the profits or earnings of the said Company up to the time of that settlement.

And the third class to consist of Fifty-Two Hundred and Eighty Eight shares, and called and designated "Common stock," to which class shall belong all the profits and earnings of said company, after the payment of the annual dividends on the said "First Preferred stock" and of the said "Second

Preferred stock," as hereinbefore provided, and

Be it further Resolved: That in the event of [310] dissolution, disincorporation or liquidation of the said Missoula Mercantile Company, the said several classes of stock aforesaid shall be redeemed in the following order and manner, to wit:

The par value of the said "First Preferred stock," together with a dividend of eight (8%) per cent per annum thereon shall be first paid in money out of whatsoever assets there may be belonging to the said company.

And the said "Second Preferred stock" shall be next thereafter redeemed and its par value, together with a dividend at the rate of twelve (12%) per cent per annum thereon shall be paid in money out of the assets of the said company, should there be a sufficiency thereof for the purpose after the redemption of the said "First Preferred stock" together with eight (8%) per cent dividend on the par value thereof as aforesaid, if not, then payment shall be made to the extent of whatever assets there may be remaining, and the same shall be paid *pro rata* among the holders of said "Second Preferred stock," and accepted by them in full redemption of said stock and if the assets of said Company are more than sufficient to redeem said "First Preferred stock" at its par value together with eight per cent dividend thereon as aforesaid, and said "Second Preferred stock" at its par value together with twelve (12%) per cent dividend thereon as aforesaid, the surplus or whatever remains of the assets of said company after the redemption of said "First

Preferred stock" and said "Second Preferred stock," as aforesaid shall be distributed *pro rata* among the holders of said "Common stock" and accepted by them in full redemption of said stock.

On the passage of the foregoing preamble and resolutions the chair ordered the roll called and the vote resulted [311] as follows:

R. A. Eddy, 530 shares by A. B. Hammond, Proxy.

E. M. Eddy, 446 shares by A. B. Hammond, Proxy.

A. B. Hammond, 1020 shares.

E. L. Bonner, 68 shares.

C. H. McLeod, 1680 shares.

T. G. Hatheway, 200 shares.

John M. Keith, 204 shares.

Mrs. F. A. Hammond, 600 shares.

Edwinna Hammond, 100 shares by A. B. Hammond,
Guardian.

Florence Hammond, 100 shares by A. B. Hammond,
Guardian.

Richard Hammond, 100 shares by A. B. Hammond,
Guardian.

Leonard Hammond, 100 shares by A. B. Hammond,
Guardian.

Mrs. C. S. Bonner, 506 shares.

Harry T. Van Wart, 40 shares.

Harry C. Keith, 40 shares.

Bessie Bonner, 266 shares by E. L. Bonner, Guard-
ian.

The entire stock of the Missoula Mercantile Company voting in the affirmative, the president announced that the Resolutions had passed unanimously, and the increase of stock was therefore ac-

cordingly authorized.

The President then announced that further in confirmation of the increase as specified in the call for this meeting, he had had prepared an Agreement, authorizing the [312] increase of the Capital stock of said Company and the division of the Capital stock as increased into the three classes, namely, "First Preferred," as conditioned in the Resolutions just passed, and "Second Preferred" as conditioned in the Resolutions just passed, and "Common" as conditioned in said Resolutions regularly and duly signed by the holders of the entire present issue of the Capital stock of the "Missoula Mercantile Company" and now presents the same to this meeting and recommends that the same be recorded as a part of these proceedings.

This Agreement made and entered into this the 24th day of October, A. D. 1891, by and between the undersigned stockholders of the "Missoula Mercantile Company," a corporation organized, existing and doing business under the Laws of Montana, witnesseth:

That we and each of us being owners of stock in the "Missoula Mercantile Company" and collectively being the owners of all and the entire stock of said Company, do severally covenant, promise and agree, each with the other, that the Capital stock of said Company, now Six Hundred Thousand (\$600,000.00) Dollars shall be increased to the sum of Twelve Hundred Thousand (\$1,200,000.00) Dollars and that the said Capital stock when so in-

creased, may be divided into three (3) classes, as follows, to wit:

First Class to be called and designated "First Preferred Stock."

Second Class to be called and designated "Second Preferred stock" and

Third Class, to be called and designated "Common stock."

And we further mutually covenant, promise and agree [313] that there shall be first paid out of the net profits or earnings of the business of said company, on the "First Preferred stock," an annual eight (8%) per cent on the par value of said stock, to the holders thereof, which sum when so paid shall be in lieu of all further participation in any of the profits or earnings of said company up to that settlement.

We further mutually covenant, promise and agree that there shall be paid out of the net profits or earnings of the business of the said Company, on the "Second Preferred stock" an annual dividend of twelve (12%) per cent on the par value of the said stock, to the respective holders thereof, Provided: There shall remain a sufficient amount of net profits or earnings after the payment of the annual dividend of eight (8%) per cent on the par value of the said "First Preferred stock," and there shall not remain a sufficient amount, then whatever sum shall be remaining, shall be divided among the holders of said "Second Preferred stock" *pro rata*, and said twelve (12%) per cent when so paid shall be in lieu of all further participations of said "Second Preferred

stock" in any of the profits or earnings of said Company up to that settlement.

And we further mutually covenant, promise and agree that whatever sum or sums shall remain of the net profits or earnings of said Company, after the payment of the annual dividend of eight (8%) per cent on the par value of the said "First Preferred stock," and after the payment of the annual dividend of twelve (12%) per cent on the par value of the said "Second Preferred stock," shall be and remain for distribution among the holders of the "Common Stock" *pro rata*; [314] and in the distribution of the same, the said "First Preferred stock," shall not, nor shall the said "Second Preferred stock," in any manner participate.

And we further mutually covenant, promise and agree that in any settlement or winding up of the affairs of the said Company, said "First Preferred stock," shall be first redeemed, and its par value, together with a dividend at the rate of eight (8%) per cent per annum thereon shall be first paid in money out of whatever assets there may be belonging to said Company.

And the said "Second Preferred stock" shall be next thereafter redeemed and its par value together with a dividend at the rate of twelve (12%) per cent per annum thereon shall be paid in money out of the assets of said Company; should there be a sufficiency thereof for that purpose, and if not, payment shall be made to the extent of whatever assets there may be after the redemption of the said "First Preferred stock" as aforesaid, but the payment shall

be made *pro rata* among the holders of the "Second Preferred stock" and accepted by them in full redemption of said stock.

And if the assets of the said Company are more than sufficient to redeem said "First Preferred stock" and said "Second Preferred stock" as aforesaid; the surplus, or whatever remains of the assets of the said Company after the redemption of the said "First Preferred stock" and the said "Second Preferred stock" as aforesaid shall be distributed *pro rata* among the holders of the said "Common Stock" and be accepted by them in full redemption of said stock.

And we further mutually covenant, promise, and agree that in selecting the Trustees of the said Missoula Mercantile Company annually, the holders of the said "First Preferred stock" [315] shall elect or select two (2) of the said Trustees; and that the holders of the said "Second Preferred stock" shall elect or select two (2) of the said Trustees; and that the holders of the Common stock of said Company shall elect or select three (3) of the said Trustees; making seven (7) the total number of Trustees.

And it is further expressly covenanted, promised, and agreed by and between the parties hereto, that the said Missoula Mercantile Co. shall at all times, pay all taxes, assessments, levies, or charges for State, County or municipal purposes out of the funds of said Co. whether the same be assessed, levied, or charged against the corporate property of said Co. or the individual stock, it being the express purpose herein to secure to the holders of the first preferred

stock a net dividend of eight per cent per annum, and to the holders of the second preferred stock a net dividend of twelve per cent per annum as hereinabove provided, free from all costs, charges, levies, assessments or taxes for State, County or Municipal purposes.

In Witness Whereof we have hereunto set our hands and seals, this the day and year first above written.

A. B. HAMMOND.

E. L. BONNER.

HARRY C. KEITH.

CARRIE S. BONNER.

C. H. McLEOD.

J. M. KEITH.

R. A. EDDY,

By A. B. HAMMOND, Attorney in Fact.

EDWINNA M. EDDY,

By A. B. HAMMOND, Attorney in Fact.

[316]

EDWINNA C. HAMMOND,

By A. B. HAMMOND, Guardian.

FLORENCE HAMMOND,

By A. B. HAMMOND, Guardian.

RICHARD E. HAMMOND,

By A. B. HAMMOND, Guardian.

LEONARD C. HAMMOND,

By A. B. HAMMOND, Guardian.

BESSIE A. BONNER,

By E. L. BONNER, Guardian.

FLORENCE HAMMOND.

THOMAS G. HATHEWAY.

HARRY T. VAN WART.

Witness:

GUST. MOSER.

JOHN H. INCH.

JNO. G. TAYLOR.

W. S. SETTLE.

The President here exhibited Fifty Certificates of "First Preferred stock" contained in a bond book with appropriate stub numbered consecutively from 1 to 50, and

Also one hundred certificates of "Second Preferred stock" contained in a bound book with appropriate stub numbered consecutively from 1 to 100 and

Also one hundred and fifty Certificates of "Common stock" contained in a bound book with appropriate stub numbered consecutively from 1 to 150 and stated that in anticipation of the action of this meeting, he had had the same prepared and now submitted them for the approval of the stockholders, said certificates being examined and found to be in form respectively, as provided in the Resolutions just passed increasing the Capital stock of this Company and dividing the same into three classes, are now on motion accordingly approved and declared to be the form adopted as the certificates of the Capital stock of this Company respectively of the classes as [317] provided.

The following Resolution was then offered by Chas. H. McLeod, who moved that the same be adopted.

Whereas, at a meeting of all the stockholders of the Missoula Mercantile Company, held at the office of

the said Company, in the City of Missoula, and the state of Montana, on the 24th day of October, A. D. 1891, a proposition to increase the capital stock of said Company from Six Hundred Thousand (\$600,000.00) Dollars to Twelve Hundred Thousand (\$1,200,000.00) Dollars, was unanimously carried by the vote of all of the said stockholders, and

Whereas, at the said stockholders' meeting, it was also agreed by a unanimous vote by all the stockholders of said Company, that the Capital stock of the said Company so increased, should be divided into three (3) distinct classes and denominations, to wit:

“First Preferred stock,” on which should be first paid out of the net profits or earnings of the said Company, an annual dividend of eight (8%) per cent on its par value.

And, Second Preferred stock on which should be next thereafter paid out of the net profits or earnings of the said Company an annual dividend of twelve (12%) per cent on the par value, should there be a sufficiency thereof for that purpose, after paying the annual dividend on the said “First Preferred stock.”

And, Common Stock to which should belong the exclusive right to participate in the remainder of the net profits or earnings of the said Company, after the payment of the Dividends, provided for the said “First Preferred stock” and said Second Preferred stock, as aforesaid, and [318]

Whereas, at said meeting it was resolved unanimously by the vote of the said stockholders, that each

of the holders of present stock in the Missoula Mercantile Company, should have the option to subscribe for as many shares of the said First Preferred stock or said Second Preferred stock as the number of shares they respectively now hold of the present stock of the said Company is in proportion to said stocks.

Therefore, be it resolved:

That it is the sense of this meeting that the present issue of stock of the Missoula Mercantile Company be redeemed and retired and to that end it is further

Resolved, That the Three Thousand shares of the First Preferred stock as subscribed may be paid for with the present stock of this Company share for share.

And that the three thousand and seven hundred and twelve shares of the Second Preferred stock and the Three Thousand and Seven Hundred and Twelve shares of the common stock of said Company, is hereby appropriated and set apart for the redemption of the remaining Three Thousand shares of the present issue of the stock of the Missoula Mercantile Company, and the Trustees of this Company are hereby authorized and directed to apply said stock *pro rata* to such redemption, and to issue to the holders of said stock certificates of their due proportion of the said stock herein appropriated on surrender of certificates now held by them respectively.

And that the remaining shares of the common stock, to wit: One Thousand Five Hundred and Seventy-six shares be and remain in the Treasury of

this Company for further sale or subscription or to such other disposition as a $\frac{2}{3}$ majority of the whole board of Trustees shall elect, at not less in [319] any event than its par value and subject to the action of the Board of Trustees of this Company, which said resolution *were* unanimously carried.

It having been suggested that those of the stockholders of the Missoula Mercantile Co., who would become holders of the First Preferred stock had received equivalent to interest on the same since Jan. 17th, 1891, to this date, and that the holders of the Second Preferred stock had not received any part of said interest, the following Preamble and Resolution was offered for the purpose of equalizing the stock in this regard.

Whereas, to the stockholders of the Missoula Mercantile Company, it appears that the subscribers to the First Preferred Stock of this Company have, by virtue of certain contracts and arrangements heretofore made and carried out, received interest on the various amounts of the old issue of the stock of this Company so held by them at the rate of eight per cent per annum from the 17th day of January, 1891, to this day.

And whereas, it further appears that the holders of the Second Preferred stock have not been so treated.

Now, therefore, for the purpose of equalizing the stockholders of the First and Second Preferred stock in this regard, the Trustees of this Company are hereby authorized, directed and required to provide for the payment to, and pay to the holders of the

Second Preferred Stock of this Company, interest on the par value of said stock at the rate of twelve per cent per annum from the 17th day of January, 1891, till the 24th day of October, 1891, which said Resolutions [320] were unanimously adopted.

The President here announced that in consideration of the interest taken and the faithful service rendered by a number of the employees of the Company, that he together with Mr. McLeod, Manager of the Company had concluded it to be to the best interest of the Company to more closely identify the employees, and with that view addressed a letter to a number of them as follows: Tom Bassler, T. T. McLeod, H. T. Van Wart, H. C. Keith, G. W. Dougherty, Gust. Moser, C. A. Barnes, Travis Hosey, W. S. Settle, F. W. Jones, C. F. Dorman, and T. J. D. Jenkins; dated the 26th day of January, 1891, in which it was stated that they would be permitted to become holders of a part of the stock of the Company on the usual terms accorded employees, and suggested that it would be proper that if the stockholders present concurred in this view that the Trustees be authorized by proper action of this meeting to carry out the suggestion in the letter referred to by transferring such employees of the Company, such number of the shares of the Company as in their Judgment would secure the end desired and promote the best interests of the Company.

Whereupon the following Resolution was offered and unanimously carried.

Whereas, it is deemed advisable and to the best interests of this Company, to interest many of the

employees and those having in charge the management and conduct of the business and affairs of this Company, as much as possible in the success, prosperity, well being and good standing of the Company, and that the same may not be so well done in any other way as by providing a means whereby they may become owners of more or less of the stock and as such holders of stock so become interested.

[321]

It is therefore resolved that the trustees of this Co. be and they are hereby authorized to sell, contract for sale or agree to sell, transfer and deliver upon such terms and conditions as to them may seem meet and proper, such share or shares of stock heretofore designated as common stock and not heretofore sold or subscribed for, as in their Judgment may be to the best interests of this Company, and as will promote the end desired and that the trustees will take from said parties proper acquaintances.

There being no further business, the meeting adjourned *sine die*.

A. B. HAMMOND,
President.

GUST. MOSER,
Secretary.

Missoula, Monta., Oct. 25, 1891.

At a meeting of the Trustees of Missoula Mercantile Co., held at the office of said Company, on this day, to carry out the wishes of the stockholders of said Company, as expressed and passed at the meeting held on Oct. 24th, 1891, there being present, A. B. Hammond, E. L. Bonner, C. H. McLeod, T. G.

Hatheway and John M. Keith. C. H. McLeod occupying the chair, and John M. Keith acting as Secretary.

It was ordered, That the Secretary of said Company, issue Common Stock, to the employees named hereafter, to carry out the spirit of letter dated January 26th, 1891, and as per Agreement made and executed by said employees, to accept said stocks as full, complete and perfect performance of each and every promise contained in said letter, and said employees by said agreement expressly waived and all promises, [322] conditions, or rights as contained in said letter. The Secretary being ordered to issue Common Stock to the following named employees:

Tom Bassler.....	25	Shares
T. T. McLeod.....	10	“
Harry T. Van Wart... ..	20	“
Harry C. Keith.....	20	“
Geo. W. Dougherty.....	20	“
Gust. Moser... ..	40	“
C. A. Barnes.....	25	“
T. Hosey... ..	10	“
W. S. Settle.....	25	“
F. W. Jones.....	20	“
C. F. Dorman.....	10	“
T. J. D. Jenkins... ..	10	“

The stockholders having passed a Resolution authorizing the Trustees to provide for the payment of Interest due the holders of First and Second Preferred stock.

It was ordered that the Treasurer pay the holders

of said First and Second Preferred stocks, the interest due them on their respective stocks up to and including Oct. 24, 1891.

There being no further business the board adjourned.

C. H. McLEOD,
Chairman.

J. M. KEITH,
Secretary.

Missoula, Mont., Sept. 5th, 1892.

Pursuant to notice published in the "Missoulian," a newspaper published in the City of Missoula, Montana, and pursuant and in accordance with the By-Laws of this Company, there was a meeting of the stockholders of the Missoula Mercantile Co., held at the office of said Company this day at [323] 12 o'clock Noon, there being present all the stockholders of said Company, of each class, either in person or by proxy duly filed with the Secretary.

On motion the chair was taken by C. H. McLeod, Vice-president, of said company and Gust. Moser acting as Secretary of said meeting.

The President presented to the meeting the Trial Balance sheet made on the 1st day of September, 1892, which fully showed the standing of the Company that date, and which after examination was approved by the stockholders present, and was ordered filed.

The President then announced the next business before the meeting was the election of seven (7) Trustees, two of holders of First Preferred stock,

two of holders of Second Preferred stock, and Three of holders of common stock, to manage the affairs of the Company until the next annual meeting, or until their successors, shall have been elected and qualified.

The President appointed Thomas G. Hatheway, and Harry T. Van Wart as tellers, and the stockholders then proceeded to cast their ballots. After all the votes had been cast, and the Tellers had counted the ballots, the following report was read: Missoula, Mont., Sept. 6, 1892. To the Stockholders of Missoula Mercantile Company,

Gentlemen: We, the undersigned having been appointed Tellers, at an election for Seven (7) Trustees, of the Missoula Mercantile Co., held this day respectfully report the vote cast as follows—for Trustees of First Class, or [324] those holding First Preferred Stock.

E. L. Bonner	received	10,586	Shares
R. A. Eddy	“	10,586	“

For Trustees of Second Class or those holding Second Preferred Stock.

A. B. Hammond	received	10,586	Shares
C. H. McLeod	“	10,586	“

For Trustees of Third Class, or those holding Common Stock.

F. T. Sterling	received	10,586	Shares
John M. Keith	“	10,586	“
Tyler B. Thompson	“	10,586	“

and would certify that the above named seven persons, have been duly elected Trustees of the Missoula

Mercantile Co., for the ensuing year.

(Signed) T. G. HATHAWAY.

HARRY T. VAN WART.

After the reading of the above communication by the Secretary, the President announced that E. L. Bonner, R. A. Eddy, A. B. Hammond, C. H. McLeod, F. T. Sterling, John M. Keith, and T. B. Thompson had been elected Trustees for the ensuing year.

There being no further business before the meeting, it was adjourned.

C. H. McLEOD,
Chairman.

GUST. MOSER,
Secretary.

Missoula, Mont., September 9th, 1892.

Pursuant to call of the President, there was a meeting of the Trustees elected September 6th, 1892, held [325] at the office of the Missoula Mercantile Co., at 2 o'clock P. M., there being present A. B. Hammond, C. H. McLeod, John M. Keith, Fred T. Sterling, and Tylar B. Thompson.

The chair was occupied by the President A. B. Hammond and Fred T. Sterling was appointed Secretary of the meeting.

The chairman then announced the first business before the meeting was the election from the Trustees of a President and one Vice-President.

The Trustees then proceeded to cast their ballot for President, and after all the votes had been cast, and counted, the Chairman announced that Andrew B. Hammond had received a majority of the votes

cast, and C. H. McLeod had received a majority of all votes cast as Vice-President, and declared A. B. Hammond elected as President, and C. H. McLeod as Vice-President. The President then announced that he had appointed John M. Keith, Fred T. Sterling, and C. H. McLeod as Executive Officers, Gust. Moser as Secretary, and Harry T. Van Wart for Treasurer the ensuing year, which appointments were confirmed.

There being no further business, the board adjourned.

Missoula, Montana, Sept. 4th, 1893.

Pursuant to a notice published in the "Missoulian," a newspaper published in the City of Missoula, Montana, and pursuant, and in accordance with the By-Laws of this Company, there was a meeting of the stockholders of the Missoula Mercantile Co.; held at the office of said Company this day at 12 o'clock noon, there being present all the stockholders of said Company and of each class, either in person or by proxy duly filed with the Secretary.

On motion the chair was taken by C. H. McLeod, [326] Vice-President of said Company, and Gust. Moser acting as Secretary of said meeting.

The President presented to the meeting the trial balance sheet made on the first day of September, 1893, which fully showed the standing of the Company that date, and which after examination was approved by the stockholders present, and was ordered filed.

The President then announced the next business before the meeting was the election of Seven (7)

Trustees, Two of holders of first Preferred Stock, Two of holders of Second Preferred Stock, Three of holders of Common Stock to manage the affairs of the Company until the next annual meeting or until their successors, shall have been elected and qualified.

The President appointed Tylar B. Thompson and Fred T. Sterling as Tellers, and the stockholders then proceeded to cast their ballots. After all the votes had been cast, and the Tellers had counted the ballots, the following report was read:

Missoula, Mont., Sept. 4, 1893.

To the Stockholders of Missoula Mercantile Company,

Gentlemen: We, the undersigned having been appointed Tellers, at an election of Seven (7) Trustees of the Missoula Mercantile Co., held this day respectfully report the vote cast as follows:

For Trustees of First Class, or those holding First Preferred Stock.

E. L. Bonner	received	10,586	shares
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R. A. Eddy	"	10,586	"
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for Trustees of Second Class, or those holding Second Preferred stock,

A. B. Hammond	received	10,586	shares
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C. H. McLeod	"	10,586	"
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[327]

For Trustees of Third Class, or those holding Common Stock,

Tylar B. Thompson	received	10,586	shares
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John M. Keith	"	10,586	"
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Fred T. Sterling	"	10,586	"
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And would certify that the above-named seven persons have been duly elected Trustees of the Missoula Mercantile Co., for the ensuing year.

(Signed) TYLAR B. THOMPSON.

FRED T. STERLING.

After the reading of the above report, by the Secretary, the President announced, that E. L. Bonner, R. A. Eddy, A. B. Hammond, C. H. McLeod, John M. Keith, Tylar B. Thompson and Fred T. Sterling had been elected Trustees for the ensuing year.

There being no further business, the meeting adjourned.

A. B. HAMMOND.

GUST. MOSER,

Secretary.

Missoula, Montana, September 7, 1893.

Pursuant to call of the President, there was a meeting of the Trustees of the Missoula Mercantile Co., held on this day, there being present E. L. Bonner, A. B. Hammond, C. H. McLeod, Fred T. Sterling, John M. Keith, and Tylar B. Thompson.

The chair was occupied by the President A. B. Hammond, Tylar B. Thompson acting as Secretary.

The President then announced that the first business before the meeting, was the election of a President and Vice-President for the ensuing year.

The Trustees then proceeded to cast their ballot for [328] President, which being counted, showed that A. B. Hammond had received all the votes cast, and was duly declared elected as President of said Company for ensuing year.

The Trustees then proceeded to cast their ballots for Vice-President, which being counted, showed that C. H. McLeod had received all the votes cast, and was duly declared elected as Vice-President of said Company for ensuing year.

The President then announced that he had appointed as Executive Committee for ensuing year, C. H. McLeod, Tylar B. Thompson and John M. Keith which appointments were on motion duly confirmed.

The President then announced that he had appointed Gust. Moser as Secretary and Harry T. Van Wart as Treasurer for ensuing year, which appointments were duly confirmed on motion.

There being no further business the board adjourned.

A. B. HAMMOND.

NOTICE TO STOCKHOLDERS.

Notice is hereby given that the annual meeting of the stockholders of the Missoula Mercantile Company, for the purpose of electing trustees for the ensuing year, and for such other business as may come before the meeting, will be held at the office of said Company in the city of Missoula, Mont., on Monday September 3, 1894, at 12 o'clock, noon.

GUST. MOSER,
Secretary.

Missoula, Montana, August 23, 1894.

Missoula, Montana, September 3, 1894.

Pursuant to notice published in the "Missoulian,"
a [329] daily newspaper published in the City of

Missoula, and agreeable to and in accordance with the By-Laws of said Company, there was a meeting of the stockholders of the Missoula Mercantile Co., held at the office of said Company, at 12 o'clock noon on this day, all the stockholders of said Company, being present in person, or represented by proxy duly filed with the Secretary.

On motion, the chair was taken by C. H. McLeod, Vice-President of said Company, Gust. Moser acting as Secretary.

The chairman presented to the meeting the trial balance taken on September 1st, 1894, showing the standing of the Company on that day, which after being duly examined, was on motion approved and ordered filed.

The President then announced that the next business before the meeting was the election of seven (7) Trustees (Two of holders of First Preferred Stock, Two of Second Preferred Stock, and Three of Common Stock), to manage the affairs of said Company, until the next annual meeting, or until their successors, shall have been elected and qualified.

The President then appointed Fred T. Sterling and Tylar B. Thompson as Tellers, and the stockholders proceeded to cast their ballots for Trustees.

After all the votes had been cast, and the Tellers had counted the ballot, they made the following report.

Missoula, Montana, September 3rd, 1894.

To the Stockholders of the Missoula Mercantile Co.,

Gentlemen: We, the undersigned, having been appointed Tellers, at an election for Seven (7)

Trustees, of the Missoula Mercantile Co., held on this day would respectfully [330] report as follows:

For Trustees of the First Class, or those holding First Preferred Stock.

E. L. Bonner	received	10,586	votes
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R. A. Eddy	"	10,586	"
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For Trustees of the Second Class, or those holding Second Preferred Stock.

A. B. Hammond	received	10,586	votes
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C. H. McLeod	"	10,586	"
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For Trustees of the Third Class, or those holding Common Stock.

Fred T. Sterling	received	10,586	votes
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Tylar B. Thompson	"	10,586	"
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John M. Keith	"	10,586	"
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and would certify that the above-named Seven persons, have been duly elected Trustees of the Missoula Mercantile Co., for the ensuing year.

(Signed) FRED T. STERLING.

TYLAR B. THOMPSON.

After the reading of the above report, the President declared E. L. Bonner, R. A. Eddy, A. B. Hammond, C. H. McLeod, Fred T. Sterling, Tylar B. Thompson and John M. Keith, the duly elected Trustees of the Missoula Mercantile Co., to serve until the next annual meeting, or until their successors are elected and qualified.

There being no further business the meeting adjourned.

C. H. McLEOD,
Chairman.

GUST. MOSER,
Secretary. [331]

Missoula, Montana, September 8th, 1894.

Pursuant to call of the President, a meeting of the Trustees of the Missoula Mercantile Co., was held on this day at twelve o'clock noon, at the office of the Missoula Mercantile Co., there being present, E. L. Bonner, A. B. Hammond, C. H. McLeod, Fred T. Sterling, Tylar B. Thompson, and John M. Keith.

The Chair was occupied by A. B. Hammond, President, Fred T. Sterling acting as Secretary.

The President *was* announced that the first business before the meeting was the election of a President, and Vice-President for the ensuing year.

The Trustees then proceeded to cast their votes for a president for Missoula Mercantile Co., for the ensuing year, which votes on being counted, were all cast for A. B. Hammond, and he was duly declared elected as President for ensuing year.

The Trustees then proceeded to cast their votes for a Vice-President for Missoula Mercantile Co., for the ensuing year, which votes on being counted, were all cast for C. H. McLeod, and he was duly declared elected the Vice-President for ensuing year.

The President then announced that he had appointed as executive committee for ensuing year C. H. McLeod, Fred T. Sterling and Tylar B. Thompson, which appointments were on motion duly confirmed.

The President then announced that he had appointed Harry T. Van Wart as Treasurer and Gust. Moser as Secretary of said Company for ensuing year, which appointments were on motion duly confirmed. [332]

There being no further business the Board adjourned.

C. H. McLEOD,
Vice-President.

FRED T. STERLING,
Secretary. [333]

Thereupon plaintiff offered and read in evidence the articles of incorporation of the Big Blackfoot Milling Company, a Montana corporation, which said articles of incorporation are in the words and figures following, to wit:

[Exhibit—Articles of Incorporation of Big Blackfoot Milling Co., etc.]

Know all men by these presents that we, the undersigned, have voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of Montana.

AND WE HEREBY CERTIFY:

First: That the name of the said corporation is
“BIG BLACKFOOT MILLING COMPANY.”

Second: That the purposes for which it is organized and formed are to carry on the business of,

a: Buying, owning, building, constructing and operating sawmills, planing-mills, grist mills, and flouring mills.

b: Buying, manufacturing, sawing lumber, rough, dressed, finished, and all building material.

c: Buying and selling grain, flour, and meal.

d: Grinding and manufacturing flour, meal, chop feed, ship stuff, etc.

e: Buying, leasing, owning and otherwise acquiring lands, water power, mill-sites and timber land

necessary to fully carry out and execute the purpose of this organization.

f: To establish, maintain, operate and carry on lumber yards, coal yards and fuel yards, at which may be sold lumber, building material, coal, fuel, etc.

g: Buying, selling and dealing generally in goods, wares and merchandise. [334]

h: Owning, operating and carrying on farms, farming and stock-raising.

i: To do general contract work, such as contracting to build, railroads, turnpikes, dirt roads, wagon roads, building dams, ditches and flumes.

j: To build, contract for building houses, barns, mills, and to own, sell, lease or rent the same.

k: To manufacture, sell, rent and lease electricity for lighting or power purposes.

l: To buy, own, sell, lease, rent, appropriate and divert water for agricultural, mining, power or domestic purposes, and to do and perform all things necessary, proper and incident to carrying out the powers hereinbefore enumerated.

Third: The capital stock of this corporation shall be the sum of Seven Hundred Thousand Dollars (\$700,000).

Fourth: That the said corporation is formed and the terms of its existence shall be twenty years from and after the date of the filing of these articles of incorporation.

Fifth: The said capital stock shall be divided into seven thousand shares of the par value of One Hundred Dollars each.

Sixth: The number of trustees of this corporation shall be seven.

Seventh: That the names and residences of those who are selected and appointed, and who are to manage and conduct the concerns of said Company for the first three months from and after the date of the filing of these articles of incorporation are the following, namely: [335]

A. B. Hammond,	Missoula, Montana.
Richard A. Eddy,	Missoula, Montana.
E. L. Bonner,	Missoula, Montana.
Thos. G. Hathaway,	Missoula, Montana.
C. H. McLeod,	Missoula, Montana.
W. H. Hammond,	Bonner, Montana.
John M. Keith,	Missoula, Montana.

Eighth: That the principal office of said Company shall be at the City of Missoula, County of Missoula, State of Montana, that the principal operations of said Company shall be in the County of Missoula and State of Montana, but the said corporation hereby declare it to be their intention to carry on, conduct, operate and extend the business and operations of said corporation into the several cities and counties of the State of Montana.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 14th day of Nov., 1891.

A. B. HAMMOND.	(L. S.)
RICHARD A. EDDY.	(L. S.)
E. L. BONNER.	(L. S.)
THOS. G. HATHAWAY.	(L. S.)
C. H. McLEOD.	(L. S.)
W. H. HAMMOND.	(L. S.)
J. M. KEITH.	(L. S.)

State of Montana,
County of Missoula,—ss.

On this 14th day of November, 1891, personally appeared before me, the undersigned, a Notary Public in and for the County of Missoula, State of Montana, [336] C. H. McLeod, E. L. Bonner, A. B. Hammond, Richard A. Eddy, Thos. G. Hathaway, W. H. Hammond and John M. Keith, personally known to me to be the same persons who executed the foregoing articles of incorporation, and who each of them, respectively, acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this the day and year first above written.

[Seal] THOS. C. MARSHALL,
Notary Public, Missoula County, Montana.

Filed November 18th, 1891, at 9 o'clock A. M., and recorded in Book "J," at page 106.

L. ROTWITT,
Secretary of State.

Thereupon plaintiff offered and read in evidence the Certificate of Extension of Term of Existence, and of Extension of Business of Big Blackfoot Milling Company, a Montana corporation, which said Certificate of Extension of Term of Existence, and of Extension of Business of Big Blackfoot Milling Company, is in the words and figures following, to wit:

State of Montana,
County of Missoula,—ss.

I, W. H. Smith, County Clerk and Recorder in and for the said County of Missoula, State of Montana, hereby certify the annexed and following to be a full, true and correct copy of a [337] certain Extension of Corporate Existence and of Extension of Business of Big Blackfoot Milling Company, a Montana corporation (#1014) filed for record July 18th, 1908, at 2:50 o'clock P. M., and recorded in ———, records of Missoula County, Montana, together with the endorsement thereon, as the same appears of record in this office.

Witness my hand and the seal of said Missoula County affixed this 18th day of July, A. D. 1908.

[Seal]

W. H. SMITH,

County Clerk and Recorder.

CERTIFICATE OF EXTENSION OF THE
TERM OF EXISTENCE, AND OF EXTENSION OF BUSINESS OF BIG BLACK-
FOOT MILLING COMPANY, A MONTANA
CORPORATION.

State of Montana,
County of Missoula,—ss.

At a special meeting of the stockholders of the Big Blackfoot Milling Company, held at its office and principal place of business in Missoula, Missoula County, State of Montana, on Saturday, June 27, 1908, at two o'clock P. M., after a compliance with the requirements of law, as provided in such cases, it was voted and agreed by said stockholders to extend

the term of the corporate existence of said corporation to forty (40) years from the date of its original incorporation, to wit, [338] November 18, 1891; being for a further and additional term of twenty (20) years from and after November 18, 1911, and until and including November 18, 1931; and also to extend the business of said corporation to another branch, to wit: subscribing for and acquiring by purchase, exchange or otherwise, taking, owning, holding, dealing in, exchanging, selling, assigning, transferring or otherwise disposing of, stocks and shares of stock of other incorporated companies organized under the laws of this or of any other State or of any Territory or Colony of the United States, or of any foreign country; and bonds, negotiable instruments and other obligations and securities, with power to this company to indorse and to guarantee any bonds, negotiable instruments, or other obligations dealt in, or sold by it, or which may be or may have been made or issued by any corporation in which this company shall own a majority of the stock; all of which will more fully appear by reference to a copy of the minutes of said stockholders' meeting, hereinafter fully set out;

NOW, THEREFORE, for the purpose of complying with the law, and for the purpose of extending the term of corporate existence of said Big Blackfoot Milling Company, and of extending its business to another branch, as by law provided in such cases; [339].

We, John R. Toole, a trustee or director of said Big Blackfoot Milling Company, and the Chairman

of the meeting of the stockholders of said company, held on said 27th day of June, 1908, as aforesaid (a copy of the minutes of which said meeting is hereto attached) and D. Gay Stivers, Secretary of said meeting of the stockholders, DO HEREBY CERTIFY AND DECLARE:

1st. That the amount of the capital of the Big Blackfoot Milling Company actually paid in is Four Million Dollars.

2nd. That the time for which the term of existence of said Big Blackfoot Milling Company is extended is twenty (20) years from and after the expiration of the present term of existence, to wit: November 18, 1911, and until and including November 18, 1931.

3rd. That the business of said Big Blackfoot Milling Company is extended to the business or branch of subscribing for, and acquiring by purchase, exchange, or otherwise, taking, owning, holding, dealing in, exchanging, selling, assigning, transferring, or otherwise disposing of, stocks and shares of stock of other incorporated companies organized under the laws of this or of any other State, or of any Territory or Colony of the United States, or of any foreign [340] country; and bonds, negotiable instruments and other obligations and securities, with power to this company to indorse and to guarantee any bonds, negotiable instruments, or other obligations dealt in or sold by it, or which may be or may have been made or issued by any corporation in which this company shall own a majority of the stock;

4th. That the whole amount of debts and liabilities of said Big Blackfoot Milling Company is the sum of Three Million, Fifty thousand, Three hundred and fifty-four dollars.

We do further CERTIFY AND DECLARE: That the copy hereto attached and marked "COPY OF MINUTES OF SPECIAL MEETING OF STOCKHOLDERS OF BIG BLACKFOOT MILLING COMPANY, JUNE 27, 1908," is a full, true and correct copy of the minutes of the meeting of the stockholders of said Big Blackfoot Milling Company, held at the office of said company at Missoula, County of Missoula, State of Montana, on June 27, 1908, at two o'clock P. M. of said day; and that all the things and proceedings were had as therein recited and recorded.

IN TESTIMONY WHEREOF the said John R. Toole, Chairman of said stockholders' meeting has hereunto subscribed his name; and the said D. Gay Stivers, Secretary of [341] said meeting, has countersigned this certificate, and a majority of the Directors of said Big Blackfoot Milling Company have signed the same, this 27th day of June, A. D. 1908.

JOHN R. TOOLE,
Chairman.

Countersigned:

D. GAY STIVERS,
Secretary.

JOHN D. RYAN,
B. B. THAYER,
JOHN R. TOOLE,

A Majority of the Directors.

State of Montana,
County of Missoula,—ss.

John R. Toole, Chairman of the meeting of the stockholders of the Big Blackfoot Milling Company, held June 27, 1908, as set forth in a copy of the minutes of said meeting, hereto attached, being first duly sworn, on his oath, deposes and says: That the matters and things set forth in the foregoing certificate, as well as those set forth in the copy of the minutes of said stockholders' meeting, attached hereto, are true.

JOHN R. TOOLE.

Subscribed and sworn to before me this 27th day of June, A. D. 1908. [342]

[Seal]

HENRY C. STIFF,

Notary Public Within and for Missoula County,
State of Montana.

State of Montana,
County of Missoula,—ss.

On this 27th day of June, in the year nineteen hundred and eight, before me, Henry C. Stiff, a Notary Public within and for the County of Missoula, State of Montana, personally appeared John R. Toole, known to me to be the person whose name is subscribed to the foregoing certificate as Chairman of said meeting, and acknowledged to me that he executed the same.

IN TESTIMONY WHEREOF, I have hereunto

set my hand and Seal, the day and year in this certificate first above written.

[Seal] HENRY C. STIFF,
Notary Public Within and for Missoula County,
State of Montana.

COPY OF MINUTES OF SPECIAL MEETING
OF STOCKHOLDERS OF BIG BLACK-
FOOT MILLING COMPANY, JUNE 27,
1908.

Missoula, Montana, June 27, 1908.

The Secretary of the Big Blackfoot [343] Milling Company, a Montana corporation, and a majority of the trustees or directors of said company, having heretofore given notice of a special meeting of the stockholders of said company to be held at the principal office and place of business thereof, in Missoula, Missoula County, State of Montana, on Saturday, June 27, 1908, at two o'clock P. M. of said day, which said notice is in words and figures as follows, to wit:

“NOTICE.

NOTICE IS HEREBY GIVEN: That a special meeting of the stockholders of the Big Blackfoot Milling Company is hereby called, and will be held at its principal place of business in Missoula, Missoula County, Montana, on Saturday, June 27, 1908, at two o'clock P. M. for the purpose of considering the advisability of extending its business so as to permit the acquisition, exchange and sale of stock in other incorporated companies, and bonds, negotiable instruments and other obligations and securities, and to extend the term of its corporate existence

twenty years, to wit, until November 18, 1931.

JOHN D. RYAN,
JOHN R. TOOLE,
F. P. ADDICKS,
B. B. THAYER,
A. J. SHORES,

Directors.

D. GAY STIVERS,
Secretary." [344]

In pursuance of said notice, the stockholders of said Big Blackfoot Milling Company met at the time and place mentioned therein, and said meeting was thereupon organized by choosing and electing John R. Toole, one of the trustees or directors of said corporation, as Chairman of said meeting; and thereupon, D. Gay Stivers, a suitable person, was by the stockholders thereat chosen as Secretary of the meeting.

A roll-call of the stockholders of the company was then made and had; and therefrom it appeared that there were present at the meeting, in person or by proxy, 6,400 shares of the capital stock of the company, being all of the capital stock of said company issued and outstanding, and representing more than two-thirds of the entire capital stock of the company.

Thereupon the affidavit of R. R. Wilbur was presented and filed, showing that the notice to the stockholders (copy of which is hereinbefore set forth) was published in the "Daily Missoulian," a newspaper published at Missoula, Missoula County, Montana, at least six (6) successive weeks previous to the day

fixed for holding said meeting.

The affidavit of D. Gay Stivers, was also presented and filed, showing that a written copy of the same notice had been deposited [345] in the postoffice at Missoula, Missoula County, Montana, addressed to each stockholder of record at his usual place of residence, at least six (6) weeks previous to the day fixed for holding said meeting; which said notice specified the object of the meeting, the time and place, when and where such meeting should be held, and the length of time for which it is proposed to extend the term of existence of the corporation, and the business to which the company would be extended or changed.

It appearing that all the steps required by law in such cases had been taken and that all notices had been given and published, as required by law, it was decided by those present, by proxy, and in person, to proceed to vote upon the propositions set forth in said notice, to wit, the extension of the term of existence of the Big Blackfoot Milling Company for the further and additional period of twenty (20) years from and after the date of the expiration of its original incorporation, to wit, until the 18th day of November, 1931; and the extending of the business of said corporation to the branch of business of subscribing for and acquiring by purchase, exchange or otherwise taking, owning, holding, dealing in, exchanging, selling, assigning, transferring or otherwise disposing of, [346] stocks, and shares of stock of other incorporated companies organized under the laws of this or of any other state, or of the

Territory or Colony of the United States or of any foreign country; and bonds, negotiable instruments and other obligations and securities, with power to this company to indorse and to guarantee any bonds, negotiable instruments, or other obligations dealt in or sold by it, or which may be or may have been made or issued by any corporation in this company shall own a majority of the stock; and that the articles of incorporation of said Big Blackfoot Milling Company be amended by inserting therein at the end of the paragraph designated "SECOND" the following, to wit:

"(m) Subscribing for and acquiring by purchase, exchange or otherwise, taking, owning, holding, dealing in, exchanging, selling, assigning, transferring or otherwise disposing of, stocks, and shares of stock of other incorporated companies organized under the laws of this or of any other State, or of any Territory or Colony of the United States, or of any foreign country; and bonds, negotiable instruments, and other obligations and securities, with power to this company to indorse and to guarantee any bonds, negotiable instruments, [347] or other obligations dealt in or sold by it, or which may be or may have been made or issued by any corporation in which this Company shall own a majority of the stock."

Thereupon a vote was taken upon each of said propositions; and upon the vote being counted and canvassed, it was shown and did appear that 6,400 votes had been cast, and of these 6,400 votes, all were in favor of said propositions submitted, to wit, to in-

crease the term of existence of the Big Blackfoot Milling Company for the additional term of twenty years from and after the termination of its present existence, and until and including the 18th day of November, 1931; and to extend the business of said Big Blackfoot Milling Company to the branch of subscribing for and acquiring by purchase, exchange or otherwise taking, owning, holding, dealing in, exchanging, selling, assigning, transferring or otherwise disposing of, stocks and shares of stock of other incorporated companies organized under the laws of this or of any other State, or of any Territory or Colony of the United States; or of any foreign country; and bonds, negotiable instruments and other obligations and securities, with power to this company to indorse and to guarantee any bonds, negotiable instruments [348] or other obligations dealt in or sold by it or which may be or may have been made or issued by any corporation in which this company shall own a majority of the stock; and to amend the articles of incorporation by adding the paragraph or provision above specified; and that there were no votes cast against either or any of said propositions.

It appearing that more than two-thirds of all the shares of stock of said corporation had been voted in favor of each of said propositions, as hereinbefore set forth, the Chairman declared each of said propositions carried, and that the term of existence of the corporation be extended accordingly, and that the business of said corporation be extended and changed in accordance therewith, and that the articles of in-

corporation be amended as hereinbefore specified.

Thereupon the Chairman and Secretary of the meeting were instructed to prepare, verify, acknowledge, file and have recorded the proper certificate showing all proceedings had at said meeting, and in all other respects to comply with the requirements of law in such cases.

Whereupon the meeting of the stockholders adjourned.

JOHN R. TOOLE,
Chairman.

D. GAY STIVERS,
Secretary. [349]

We, John R. Toole, Chairman, and D. Gay Stivers, Secretary, respectively, of the special meeting of the stockholders of the Big Blackfoot Milling Company (minutes of which are hereto attached), and the undersigned, a majority of the Board of Trustees or Directors of said Big Blackfoot Milling Company, DO HEREBY CERTIFY:

That the foregoing is a full true and correct copy of the minutes and proceedings of the special stockholders' meeting of said Big Blackfoot Milling Company, held at the office and principal place of business of said company, at Missoula, Missoula County, Montana, on June 27, 1908, at two o'clock P. M. of said day, in pursuance of the notice, a copy of which is therein set out.

IN TESTIMONY WHEREOF, we have hereunto

set our hands this 27th day of June, A. D. 1908.

JOHN R. TOOLE,
Chairman.

D. GAY STIVERS,
Secretary.

JOHN D. RYAN,

B. B. THAYER,

JOHN R. TOOLE,

A majority of the Board of Directors of the Big
Blackfoot Milling Company.

(Endorsed:)

I certify that I received and filed [350] this instrument for record on the 18th day of July, 1908, at 2:50 o'clock P. M.

W. H. SMITH,
County Recorder.

Filed for Record Oct. 19th, 1908, at 2:30 o'clock P. M. and Recorded in Volume E-1, page 145.

A. N. YODER,
Secretary of State.

Thereupon plaintiff offered and read in evidence the articles of incorporation of the Blackfoot Milling and Manufacturing Company, a Montana corporation, which said articles of incorporation are in the words and figures following, to wit:

**[Exhibit—Articles of Incorporation of Blackfoot
Milling & Manufacturing Co., etc.].**

Know all men by these presents, that we the undersigned, have this day, voluntarily associated ourselves together for the purpose of forming a corpo-

ration, under the laws of the Territory of Montana.

And we hereby certify:

First. That the name of said Corporation is
“Blackfoot Milling and Manufacturing Company.

Second. That the purposes for which it is formed,
are to carry on a general manufacturing business;
To purchase, hold, erect and maintain saw mills,
build dams, Booms, and Flumes, holding, hauling,
and transporting logs and lumber; to manufacture,
buy and sell lumber and shingles. To manufacture
all kinds of dressed lumber, doors, sash, blinds, and
mouldings, building materials and all other articles
[351] usually manufactured in such mills and fac-
tories. To build, construct and maintain, booms,
dams, flumes, canals and ditches, for the purpose of
supplying water power and facilities, running and
operating machinery of various kinds, and to supply
water for agricultural, domestic and other useful
and beneficial purposes. And to sell, lease and dis-
pose of such water and water power. To carry on
a general Mercantile business, buy and sell all kinds
of Merchandise and all kinds of Country Produce
and Manufactured Articles. To build, erect and
operate Mills Smelters and other works, for the pur-
pose of Crushing, smelting, reducing and refining
ores of all kinds, and to crush, smelt and reduce and
refine Ores; to buy, sell, handle and deal in all kinds
of Ores and Bullion. To purchase, hold erect and
maintain all necessary machinery and appliances, to
manufacture and produce electric light; and to fur-
nish electric light to light Mills, Factories, Towns,
Public Streets, Buildings, and residences and to

erect, maintain all necessary poles, wires and circuits for the use of the same. And for the same purpose to obtain and hold all necessary franchises and privileges to be used in connection with said business, and to sell and dispose of the same whenever it may be deemed necessary so to do. To purchase, locate, appropriate and hold water and water rights and privileges for useful and beneficial purposes, with power to sell and dispose of the same. To build, erect and maintain Flouring Mills and Manufacture Flour and such other articles of Food as are usually manufactured from the different kinds of grain, and to buy and sell all kinds of grain Flour and other articles that may be manufactured at such Mills. [352] And for the purpose of successfully carrying out the objects for which this corporation is formed, to purchase and hold real estate and to sell and dispose of the same.

Third. That the place where its principal business is to be transacted shall be in the Town of Missoula, Missoula County, Montana Territory.

Fourth. That the term for which it is to exist is to be Twenty years, from and after the date of its incorporation.

Fifth. That the number of its Trustees shall be nine (9) and the names and residences of those who are appointed to manage the affairs of the company for the first three months are

Charles H. McLeod of Missoula, Montana.
John M. Keith, “ Missoula, Montana.
Charles E. Beckwith, “ Missoula, Montana.
George L. Hammond, “ Sunset, Montana.
Edwin A. Winstanley, “ Missoula, Montana.
Charles B. Dawes, “ Bonner, Montana.
Thomas C. Marshall, “ Missoula, Montana.
Howard P. Heacock, “ Florence, Montana.
Michael J. Connell, “ Butte City, Montana.

Sixth. That the amount of the capital stock of the corporation shall be three hundred thousand (\$300,000) Dollars, divided into Three Thousand Shares of the par value of one hundred (100) Dollars each.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 21st day of January, 1888.

CHARLES H. McLEOD.

JOHN M. KEITH.

CHARLES E. BECKWITH.

GEORGE L. HAMMOND.

EDWIN A. WINSTANLEY.

CHARLES B. DAWES.

THOS. C. MARSHALL.

HOWARD P. HEACOCK.

MICHAEL J. CONNELL. [353]

Territory of Montana,
County of Missoula,—ss.

On this 28th day of January, A. D. one thousand eight hundred and eighty-eight, personally appeared before me Gust Moser, a Notary Public in and for said Territory of Montana, Charles H. McLeod, John M. Keith, Charles E. Beckwith, George L. Ham-

mond, Edward A. Winstanley, Charles B. Daves, Thomas C. Marshall and Howard P. Heacock, to me well known to be the same persons who executed the annexed and foregoing instrument and who acknowledged that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

[Seal]

GUST MOSER,
Notary Public.

Territory of Montana,
County of Lewis & Clark,—ss.

On this 26th day of January, A. D. one thousand eight hundred and eighty-eight, personally appeared before me, Junius G. Sanders, a Notary Public in and for said Territory of Montana, Michael J. Connell, to me well known to be the same person who executed the annexed and foregoing instrument and who acknowledged that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

[Seal]

JUNIUS G. SANDERS,
Notary Public,
Montana.

Filed for record in the office of the Secretary of Montana, Feby. 4, at 3 o'clock A. M., A. D. 1888.

WM. B. WEBB,
Secretary of Montana. [354]

[Exhibit—Articles of Incorporation of Montana Improvement Co., etc.]

Thereupon plaintiff offered and read in evidence the articles of incorporation of The Montana Im-

provement Company (Limited), a Montana corporation, which said articles of incorporation are in the words and figures following, to wit:

This is to certify that we, the undersigned, to wit: Edward L. Bonner, Marcus Daly, Michael J. Connell, Washington Dunn, Andrew B. Hammond and Richard A. Eddy, of the Territory of Montana, do hereby associate ourselves together to form and do hereby form an incorporated company, under the general incorporation laws of the said Territory. The corporate name of the said company is hereby declared to be "The Montana Improvement Company (Limited)." The capital stock of the said company shall be Two Million dollars which shall be divided into twenty thousand shares of one hundred dollars each share. The term of the existence of the said company shall be twenty years. The number of the Trustees of the said company shall be five. The names of those who shall manage the concerns of the said company for the first three months are and shall be Edward L. Bonner, and Washington Dunn of the County of Deer Lodge in said Territory, Michael J. Connell and Marcus Daly, of the County of Silver Bow, in said Territory of Montana, and Andrew B. Hammond, of the County of Missoula, in said Territory. The operations and business of said company [355] shall be carried on in Deer Lodge City, Deer Lodge County aforesaid, but it may do business elsewhere in Montana, Idaho and Washington territories.

The objects for which the company is formed are: First: To contract for the construction and equip-

ment and to construct and equip railroads and telegraph lines, military and turnpike roads, canals, docks, locks, bridges, water-works, street railroads, gas and electric light works, elevators, stockyards and other public works; to pay or to receive payment therefor in cash or in stocks, shares, bonds or other securities; and to maintain and operate, rent, lease or sell such railroads, telegraph lines, roads, canals, docks, locks, bridges, waterworks, street railroads, gas works, electric light works, elevators, stock yards and other public works, and to mortgage the same; to pay for or receive payment therefor in cash or in stocks, shares, bonds, notes, or other securities, and to carry freight or passengers on such railroads, and street railroads, and to receive tolls for the same.

Second. To lease and operate and maintain on such terms as may be agreed on, any street or other railroad or railroads, with its or their rolling stock, [356] equipments and appurtenances. Any turnpike or other toll road, any steamship or steamboat line, canal, dock, lock, bridge or other public work and to receive tolls thereon.

Third. To construct or to promote, facilitate or assist in the construction, building, extension, operation or repair of any railroad line, or steamboat line, and to pre-empt, locate, buy, sell, lease, rent and operate any mine of gold, silver, lead, iron, cinnibar, clay, limestone, and coal, and to buy, sell, ship, manipulate and transport the products thereof and to buy, sell, lease, rent, occupy and improve real estate, to divide the same into town lots, erect buildings and towns, and to pre-empt, locate, buy, rent, lease and

supply water for the same, or for manufacturing, irrigation or other purposes, and for such purpose to subscribe for or purchase the stocks or bonds of any such company or any company whatever, except its own, or to guarantee or otherwise secure interest on the bonds or stock of such company or the payment or dividends thereon by pledge or mortgage of the property of this corporation or any part thereof or otherwise.

Fourth. To build, buy, purchase, rent, charter or lease, steamboats to run on the Columbia, Missouri and Yellowstone rivers [357] and the tributaries thereof, and also piers, warehouses, ferry-boats, stages and other means of transportation, and to operate the same and receive tolls or fares therefor.

Fifth. To buy and sell stocks, bonds and shares, borrow and lend money on real or personal security, or otherwise negotiate loans and transact any and all other business usually transacted by a credit or finance company.

Sixth. To buy and sell steel, iron, ties, locomotives, cars and any and all other railroad supplies and material.

Seventh. To purchase, acquire, rent, lease, hold, drain, improve, cultivate, lease, mortgage, sell, convey and dispose of improved and unimproved lands and town and city lots and property.

Eighth. To erect, construct, and maintain buildings upon its own property or leased property, for stores, offices, dwellings, warehouses, shops, factories, mills and every other lawful purpose.

Ninth. To pre-empt, locate, purchase, acquire,

hold, open, develop, work, lease, mortgage, sell, convey and dispose of gold, silver, iron, coal, copper, lead, cinnabar, clay, marble, lime and other mines, to buy and sell and manipulate the products thereof; to lease, rent, erect, buy, sell and mortgage, mills and machinery for the working thereof. [358]

Tenth. To prospect for mineral ore; to produce, refine, buy and sell the same.

Eleventh. To build, lease, rent, use wharves, docks and piers.

Twelfth. To discover, locate, pre-empt, purchase, lease and rent banks of sand and clay, for the manufacture of cement, artificial stone, brick, fire-brick, pottery, tile, stone-ware, and to manufacture the same; and buy and sell the products thereof.

Thirteenth. To locate, purchase, sell, lease or rent timber lands; to buy stumpage on timber lands; to cut, transport, buy and sell the same; to manufacture the same into doors, blinds, sash, ship timber, lumber, and all other manufacture of which said lumber is capable.

Fourteenth. To erect, construct, buy, lease, rent and operate grist and flouring mills and to sell, lease and rent the same.

Fifteenth. To buy flour, wheat, oats, barley, corn and all kinds of farm produce, and to sell the same.

Sixteenth. To buy, lease and hire, horses, cattle, hogs and sheep and to sell, lease and hire the same.

In testimony whereof we have hereunto subscribed our names this First day of August, A. D. 1882.

[359]

In Presence of

H. S. Reed.	EDWARD L. BONNER.	(Seal)
Wm. L. Hoge.	MARCUS DALY	(Seal)
Wm. L. Hoge.	MICHAEL CONNELL.	(Seal)
H. S. Reed.	WASHINGTON DUNN.	(Seal)
Frank H. Woody.	ANDREW B. HAMMOND.	(Seal)
Frank H. Woody.	RICHARD A. EDDY.	(Seal)

Territory of Montana,
County of Silver Bow,—ss.

On this first day of August, A. D. one thousand eight hundred and eighty-two, personally appeared before me, Wm. L. Hoge, a Notary Public in and for said County, Marcus Daly and Michael J. Connell, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument as parties thereto, and they severally duly acknowledged to me that they had so executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

[Seal]

WM. L. HOGE,
Notary Public.

Territory of Montana,
County of Deer Lodge,—ss. [360]

On this eighth day of August, A. D. one thousand eight hundred and eighty-two, personally appeared before me, Henry S. Reed, a Notary Public in and for said Territory, Edward L. Bonner and Washington Dunn, whose names are subscribed to the

annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument, as parties thereto, and who each for himself, duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, the day and year in this certificate first above written.

[Seal]

HENRY S. REED,
Notary Public.

Territory of Montana,
County of Missoula,—ss.

On this 26th day of August, A. D. one thousand eight hundred and eighty-two, personally appeared before me, Frank H. Woody, a Notary Public in and for said county Richard A. Eddy and Andrew B. Hammond, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described [361] in and who executed the said annexed instrument as parties thereto, and they severally duly acknowledged to me that they had so executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

[Seal]

FRANK H. WOODY,
Notary Public.

Territory of Montana,
County of Deer Lodge,—ss.

I, James S. McAndrews, County Clerk and Recorder within and for the County aforesaid, do hereby certify that I have carefully compared the foregoing with the certificate of incorporation of "The Montana Improvement Company (Limited)" on file in my office and find the same to be a duplicate thereof.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said county at Deer Lodge City this 12th day of September, A. D. 1882.

JAMES S. McANDREWS,
County Clerk.

(Endorsed:)

Filed for record in the office of the Secretary
[362] of Montana Territory, September 18, 1882.

ISAAC D. McCUTCHEON,
Secretary.

Recorded in Book "B" of Incorporations, pages 273, etc.

Q. I invite your attention to page 57 of this book, (stock book of Missoula Mercantile Company), where it reads as follows: Stockholder's name; Big Blackfoot Milling Company; P. O. Address; Bonner, Montana. Dr.; Cr.; under that heading the following entry, 1898, October 27, Journal folio 4, Certificate number 38, number of shares 22; dated 1892, February 1, Journal folio 3, number of certificate 38, number of shares 22. The latter date and entry

(Deposition of C. H. McLeod.)

being the date on which the shares of stock were issued to the Big Blackfoot Milling Company. Does this record show from your examination that the 22 shares of stock in the Missoula Mercantile Company were issued to the Big Blackfoot Milling Company on February 1, 1892? A. I expect that is correct.

Q. And that the certificate of stock so issued on February 1, 1892, to the Big Blackfoot Milling Company was surrendered and cancelled on October 27, 1898? A. This record is correct.

(Witness continuing:) I think that the Big Blackfoot Milling Company acquired that stock in the way of securing that account; Mr. Ross at one time worked for the Big Blackfoot Milling Company, and I think when he left their employ he owed them some money, and turned that stock over to secure them against loss. [363]

Cross-examination.

I think the Bonita Mill was built in 1885; the firm of Eddy-Hammond & Company went out of all lumber business in 1883; the Northern Pacific Railroad Company practically had concluded its contracts for ties along this part of the road at that date.

Q. Now, in view of those facts then, can you not answer definitely whether or not any timbers were furnished by Eddy-Hammond & Company to the Northern Pacific Railway under its contract, that were cut and sawed at the Bonita Mill?

A. Eddy-Hammond & Company sold out their lumber business, I think, in the early part of 1883 to the Montana Improvement Company, and as the

(Deposition of C. H. McLeod.)

railroad was finished through this country in July, I think, 1883, Eddy-Hammond & Company could not have sawed any timber or ties for the railroad at the Bonita Mill in 1885. No timbers were sawed at the Bonita Mill for Eddy-Hammond for the Northern Pacific contract at that time.

Wednesday, January 22, 1913.

**[Testimony of U. S. Swartz, for Plaintiff
(Recalled).]**

U. S. SWARTZ, a witness who had been called and sworn on behalf of the plaintiff, was recalled by the plaintiff and testified as follows:

Direct Examination.

I testified that I surveyed and marked the lines around the sections involved in this suit. In doing this work I acted as follows: On the boundary lines of the sections I ran the lines or replaced the old Government lines where I could find them, and where I could not find them I ran a correct line between the corners and blazed them with an ax on each side of the [364] trees, making a scalping on each side of the tree the way the line was to run, that is, if the line ran north, on the north side of the tree, and if a line ran south, on the south side of the tree—either north or south, as the case might be. That was the common way of blazing a line. Then wherever I subdivided I would subdivide from quarter post to quarter post, running the line through and blazing the line on the trees in the same manner as on a section line; where the trees had all been cut

(Testimony of U. S. Swartz.)

and none were there, I would either put up stakes and mark them, blaze the stakes with the same kind of a blaze, or blaze the stumps wherever one happened to come directly on the line. After I did this, I indicated to the men where they were to do the scaling and the counting of the stumps and the manner in which I had marked the lines. I was present in the Blackfoot country about the year 1912 with Jack Cunningham. We were on the southeast quarter of section 28-14-14. At that time I pointed out to Cunningham where the northwest quarter of section 34, same township and range, was located. I am familiar with the location, by section number, of the mill which we have designated throughout the trial as the Bonner Mill. It is on sections 21 and 22, township 13 north, range 18 west.

Cross-examination.

I did all of the surveying for the Government that is involved in this suit. As to the northwest quarter of section 2, township 14 north, range 14 west, I also surveyed that tract. It is a fact that I found that land to be a virgin section, without anything cut off. I don't know how that mistake came about. I did survey the land that was cut, without a doubt, but put down evidently the wrong description, at the head of my survey. I personally of my own knowledge know [365] nothing about this timber cutting and I don't know as a matter of personal knowledge who took the timber.

Redirect Examination.

I did find a quarter section in the vicinity of this

(Testimony of U. S. Swartz.)

northwest quarter of section 2-14-14 that had been cut; but I put a wrong description at the head of it, making an error in putting down the description of the land, and I think the Government made a mistake in charging the defendant with something that had never been cut for that reason. It was merely a clerical error on my part.

Mr. HALL.—We ask your Honor for an order requiring the defendant's counsel to produce the corporate records of the Montana Improvement Company, including the minute-book and the stock books of that corporation.

The COURT.—What is the object of it, to disclose the stockholders and officers of that corporation?

Mr. HALL.—Yes, that is the purpose of calling for those books.

The COURT.—The motion will be granted.

Mr. WHEELER.—We answer that the evidence shows who the stockholders in that corporation were. That is a defunct corporation, your Honor, and went out of existence long ago. We answer that we neither have the books in our possession, nor under our control and we do not know where they are. The corporation died some twenty years ago.

The COURT.—There are some fragmentary statements in the record as to who the stockholders were. The evidence does not purport to show who all of the stockholders were. It does tend to show some of them and who the managing people were, but they are entitled to those books if you [366] have them.

If you have not got them, why, of course, you cannot produce them.

Mr. WHEELER.—We answer that we have not got them. We make proffer of all our witnesses, the principal witnesses, or any witness to that effect, if counsel wishes.

Mr. HALL.—My understanding of the matter is, that counsel has stated to me privately that those records have been lost and destroyed. Mr. Roberts told me that they were sent to New York to be used in another case and that they were never returned.

Mr. WHEELER.—Away back twenty years ago there was some suit in New York involving some of the stock. It is probable that the books were sent there then and they were never sent back. That is the information I have from my client.

Mr. HALL.—We now move that the Court require the defendant to produce the stock books, minute-books and records of the Blackfoot Milling & Manufacturing Company.

Mr. WHEELER.—We answer that we have not got those books in our possession or under our control; moreover, we would object to any uniform drag-net order of that character, for the reason that counsel must lay his finger upon some evidence that would be relevant here in order that the Court might base its order upon that.

The COURT.—There is enough evidence in the case, without it being specifically pointed out, to warrant the production of those books, but if you have not got them, that ends it.

Mr. WHEELER.—We have not got them. Mr.

Hammond [367] is not now and never has been in that company.

Mr. HALL.—We also ask for an order requiring the defendant to produce the books and papers of the Big Blackfoot Milling Company.

Mr. WHEELER.—We answer that the books and papers of the Big Blackfoot Milling Company are not now and never have been in our possession, or under the control of A. B. Hammond, and the evidence shows that the Big Blackfoot Milling Company was transferred in the latter nineties to the Anaconda Company, or some people connected therewith, and they have since operated that corporation and are now operating it.

Mr. HALL.—The corporation is defunct.

Mr. WHEELER.—I don't know what has become of it.

The COURT.—You did not sell the books, you sold the property.

Mr. WHEELER.—On the contrary, we sold the stock, they took the whole thing over.

The COURT.—You did not sell the books of the corporation. A sale of the stock would not carry the books.

Mr. WHEELER.—Certainly not. We sold out everything. I mean we sold out the stock to that company. We are no longer stockholders therein and have not been for many years. [368]

Mr. HALL.—May it please the Court, the plaintiff now desires to offer in evidence a certified copy of the duplicate assessment book of the State of Montana for the year 1891, that portion of the record

here relating to the assessment of lands of the Missoula Mercantile Company for the year 1891—we only ask for that portion of it, one particular item in there.

Mr. WHEELER.—It is the fact, I daresay, your Honor, that counsel wishes to show to the jury that some of the property that is claimed to have belonged to the Blackfoot Milling & Manufacturing Company, or to the Big Blackfoot Milling Company, was actually turned in by the Missoula Mercantile Company and an assessment made to that corporation. We object to the same upon the ground that it is irrevelant, incompetent and immaterial, and hearsay, *res inter alios acta*; it has not been shown that the matter was something that the defendant here had anything whatever to do with, or that he ever knew of its being so turned in, and it is further objectionable upon the ground that we do not know who turned it in. There is no evidence that anybody turned it in.

Thereupon the Court overruled the objection of defendant, to which said ruling of the Court defendant duly excepted.

Defendant's Exception No. 01—A.

And thereupon the whole of said copy of said part of said duplicate assessment book relating to the assessment of Missoula Mercantile Company for the year 1891 was received in evidence and was marked Plaintiff's Exhibit No. 5.

That from said copy of said part of said duplicate assessment book, it appeared that the Bonner Mill

property, being the Northeast quarter of Section 22, Township 13 North, Range 18 West, was assessed to Missoula Mercantile Company and that the Florence [369] Hotel and Eddy Block and also the Hammond Block were assessed to said Missoula Mercantile Company.

Thereupon plaintiff offered in evidence a certified copy of the duplicate assessment book of the county of Missoula for the year 1892, setting forth assessment of the Missoula Mercantile Company for said year. To the introduction in evidence of said part of said certified copy of said duplicate assessment book, defendant objected, upon the same several and separate grounds as are above stated in EXCEPTION No. 1-A, but which said objections were overruled by the Court.

Defendant's Exception No. 01-B.

That thereupon the whole of said part of said copy of said duplicate assessment book for the year 1892 was admitted in evidence and marked Plaintiff's Exhibit No. 6; and it appeared therefrom that the Bonner Mill property being the Northeast quarter of Section 22, Township 13 North, Range 18 West, was assessed to Missoula Mercantile Company and that the Florence Hotel and Eddy Block and also the Hammond Block were assessed to Missoula Mercantile Company.

That thereupon plaintiff offered in evidence a certified copy of part of the duplicate assessment book of the County of Missoula for the year 1893, setting forth assessment of the Missoula Mercantile Company for said year. To the introduction in evidence

of said part of said certified copy of said duplicate assessment book, defendant objected, upon the same several and separate grounds as are above stated in Exception No. 1-A, but which said objections were overruled by the Court.

Defendant's Exception No. 01-C.

That thereupon the whole of said part of said copy of said duplicate assessment book for the year 1893 was admitted [370] in evidence and marked Plaintiff's Exhibit No. 7; and it appeared therefrom that the Bonner Mill property, being the Northeast quarter of Section 22, Township 13 North, Range 18 West, was assessed to Missoula Mercantile Company and that the Florence Hotel and Eddy Block and also the Hammond Block were assessed to Missoula Mercantile Company.

Thereupon plaintiff offered in evidence a certified copy of part of the duplicate assessment book of the County of Missoula for the year 1894, setting forth assessment of the Missoula Mercantile Company for said year. To the introduction in evidence of said part of said certified copy of said duplicate assessment book, defendant objected, upon the same several and separate grounds as are above stated in Exception No. 1-A, but which said objections were overruled by the Court.

Defendant's Exception No. 01-D.

That thereupon the whole of said part of said copy of said duplicate assessment book for the year 1894 was admitted in evidence and marked Plaintiff's Exhibit No. 8; and it appeared therefrom that the

said Bonner Mill property, the Florence Hotel and Eddy Block, Eddy Residence, E. L. Bonner residence, "W. H. Hammond residence, \$2500.00" and "W. H. Hammond Levasseur house, \$400.00" were assessed to Missoula Mercantile Company.

Thereupon plaintiff offered in evidence a certified copy of part of the duplicate assessment book of the County of Missoula for the year 1890, setting forth assessment of the Missoula Mercantile Company for said year. To the introduction in evidence of said part of said certified copy of said duplicate assessment book, defendant objected, upon the same several and separate grounds as are above stated in Exception No. 1-A, but which said objections were overruled by the Court.

Defendant's Exception No. 01-E. [371]

That thereupon the whole of said part of said copy of said duplicate assessment book for the year 1890 was admitted in evidence and marked Plaintiff's Exhibit No. 9; and it appeared therefrom that 6,750,000 feet of lumber and 4,000,000 feet of logs were assessed to Missoula Mercantile Company, and that the Florence Hotel and Eddy Block were assessed to Missoula Mercantile Company.

Thereupon plaintiff offered in evidence a certified copy of part of the duplicate assessment book of the County of Missoula for the year 1890, setting forth assessment of the Missoula Mercantile Company for said year. To the introduction in evidence of said part of said certified copy of said duplicate assessment book, defendant objected, upon the same several and separate grounds as are above stated in

Exception No. 1-A, but which said objections were overruled by the Court.

Defendant's Exception No. 01-F.

That thereupon the whole of said part of said copy of said duplicate assessment book for the year 1890 was admitted in evidence and marked Plaintiff's Exhibit No. 10; and it appeared therefrom that the Bonner Mill property, being the Northeast quarter of Section 22, Township 13 North, Range 18 West, was assessed to Missoula Mercantile Company, and that the Florence Hotel and Eddy Block and also the Fowler Mill, the Tyler Mill, the McClain Mill and the Silver Thorn Mill and outfit were assessed to Missoula Mercantile Company.

Thereupon plaintiff offered in evidence a certified copy of part of the duplicate assessment book of the County of Missoula for the year 1895, setting forth assessment of the Missoula Mercantile Company for said year. To the introduction in evidence of said part of said certified copy of said duplicate assessment book, defendant objected, upon the same [372] several and separate grounds as are above stated in Exception No. 1-A, but which said objections were overruled by the Court.

Defendant's Exception No. 01-G.

That thereupon the whole of said part of said copy of said duplicate assessment book for the year 1895 was admitted in evidence and marked Plaintiff's Exhibit No. 11; and it appeared therefrom that the Bonner Mill property, being the Northeast quarter of Section 22, Township 13 North, Range 18, was

(Deposition of Frank Foster.)

assessed to the Missoula Mercantile Company; and that the Hammond Block, Florence Hotel and Eddy Block, and Eddy residence; also "W. H. Hammond residence \$2500.00" and "W. H. Hammond Levasseur house, \$400.00" were assessed to Missoula Mercantile Company. [373]

Thereupon the plaintiff rested.

[Deposition of Frank Foster, for Defendant.]

The deposition of FRANK FOSTER, a witness called and sworn on behalf of the defendant, was offered and read in evidence by the defendant, as follows:

Direct Examination.

I reside at Paradise, Montana; by occupation I am a farmer; am forty-eight years old. **I was at one** time familiar with the tract of land known as the Henry F. Edgar claim, embracing the southeast quarter of section 28, 14-14. I first went on to the land in December, 1885. Henry F. Edgar was my stepfather; his wife was my mother. Mr. Edgar has been dead for nearly two years. Mrs. Edgar has been dead for over six years. When I went to the Edgar claim in December, 1885, Mr. and Mrs. Edgar were living on the claim. Their improvements on the claim consisted of a dwelling-house rough log house, and a bunkhouse for the men that were working for them and a stable. Probably the value of these buildings was at that time \$300.00, at least. The men that Mr. Edgar had working for him, some half dozen men, were occupying the bunkhouse.

(Deposition of Frank Foster.)

These men were engaged in cutting timber, logging it on the river bank. That timber had been cut and was being cut from Mr. Edgar's claim, and most of it had been cut in the immediate vicinity of the house. My best recollection of the amount of timber that Mr. Edgar cut that winter would be somewhere in the neighborhood of 600,000 feet—the only way I can arrive at the amount he cut is that he had two saws running for a month that I know of; they would average 10,000 feet a day to the saw. These logs were banked on the Blackfoot River and went down with the drive the next spring. Mr. Edgar and his men hauled some of them to the bank of the stream—not all—the snow let up; but I think [374] he must have hauled fully three-fourths of the logs he cut that winter. I assisted Mr. Edgar with the hauling of these logs through the winter. As soon as the spring came, he cleared up some land for cultivation, and I helped him with that—making the fences.

Q. What did he do in clearing up the land—did he make any disposition of the tops of the trees?

A. Why, he used some of the tree tops in the construction of his fences, the larger stuff, the decayed stuff and logs that were not fit for use as saw timber, he rolled into heaps and made charcoal of that; he had two charcoal pits that he sold to the logging camp.

(Witness Continuing:) That summer of 1886, I should judge, Mr. Edgar had two or three acres of his claim under cultivation. The crops consisted of vegetables and potatoes, and stuff he could sell to

(Deposition of Frank Foster.)

the logging camps. He only cultivated one piece of land; he cleared up two, but he never made use of the second; the trouble came up in regard to his final proof, and he never went any further with his improvements. The piece of land that he found on was irrigated; for this purpose he dug a ditch, taking the water out of Fish Creek. During that summer Mr. Edgar kept some cattle, horses and chickens. He sold all the charcoal he burned and the vegetables he raised to the logging concern—George Hammond was in charge of it—they made several camps in the river that following summer. All the timber that Edgar had not cut himself was cut during the summer of 1886—there might be a few scattering trees left, but it was virtually all taken off in the summer of 1886. [375]

Q. Do you remember by whom this cutting was done?

A. George Hammond was the man that was in charge of operations there; of course, he had a foreman, a man by the name of Robert Moore; he was the foreman over the crew.

(Witness Continuing:) That summer I became acquainted with a man by the name of John Cunningham; I could not be positive where he was working at that time; to the best of my recollection he worked there with Moore on this Edgar claim cutting that timber for some time; that is where I first met the man. I recall a fire that summer that ran through the timber cutting the tops; that fire extended into the Edgar claim. Mr. and Mrs. Edgar

(Deposition of Frank Foster.)

continued to live on the Henry F. Edgar claim until the spring of 1889; that place was their home continuously, and during the period mentioned, they raised the gardens every year—raised a good deal of garden products—sold it all. During that period he had several cattle and sold butter to the camps. When Mr. Edgar quit there he had in the neighborhood of twenty head of cattle; I would not be positive as to the exact number.

Q. Mr. Foster, you have said that you are a farmer, we would ask you, in your judgment, what was the capability of the Edgar claim for making a farm and home?

A. It was a piece of good agricultural land, after the timber was taken off and the land cleared; the soil was good; it was well watered; it lay flat, convenient for irrigation.

(Witness Continuing:) About one-half of it would be called bottom land; a good share of the side hill was merely slopes; the water [376] could easily be carried on to it and that could have been made use of. The soil in the bottom was good, rich soil, black loam. From a farming standpoint, it was adapted to the production of almost any farming crop; in a country like that I think probably hay would have been the best crop at that time. I recall the tract of land known as the Elijah Cunningham claim, situated in the northwest quarter of section 34, township 14 north, range 14 west and which cornered on the Edgar claim. I first became acquainted with that tract of land shortly after I went

(Deposition of Frank Foster.)

up into that country in 1886. I was over it a dozen times in '86. There was a man named Goodall at that time who located it; he had a cabin up there. At the time I first knew that claim no timber had been cut from it. I continued to be familiar with that claim—Elijah Cunningham claim—until the spring of 1891, when I left there, and when I left no timber had been cut from it, except for building and fencing.

Cross-examination.

When I first went to live on the Edgar claim, I was between twenty-one and twenty-two years old. Mr. Edgar was my mother's second husband. I first got acquainted with Mr. Edgar in 1883, in Missoula. The way I happened to go up and live on the Edgar claim was that I had no fixed place of abode; my mother was there and it was natural that I would go there. I helped to work for Mr. Edgar; I assisted him; I was not working for him as a hired man. I certainly was well acquainted with Mr. Edgar at that time. I could not be positive where he was born; he always said he was born in Scotland. He was in his fifties when I first knew him. I could not say what agreement or what arrangement he had with the Hammonds [377] under which he disposed of this timber to them; he was logging, well along with his work when I came up there. I never had any talk with him about the sale of that timber to the Hammonds; he was putting it on the river bank for, I suppose, the Hammonds. I do not recall him ever telling me how he came to take up that claim. It

(Deposition of Frank Foster.)

was naturally a good timber claim, a well located claim. I don't think it is a fact that Mr. Edgar told me he took up that claim at the solicitation of Henry or W. H. Hammond. He had been living on the claim probably two months when I went there in 1885. He had just filed on it previous to going there. Immediately after he went there he commenced these logging operations.

Q. He continued logging operations until all the merchantable timber was cut off that quarter section?

A. He didn't do any further logging in person after that first winter; he always cut, of course, he was paid for it.

(Witness Continuing:) The logging operations on the claim commenced immediately after he settled on there and continued right along, as weather conditions would permit, until the claim was finally stripped of its merchantable timber, and after it was stripped of its timber, Mr. Edgar continued to live there. It is also a fact that the Headquarters of Fish Creek Camp continued in existence, adjoining Mr. Edgar's claim as long as he lived there. From the time the timber was stripped from this land until Mr. Edgar finally left it, he never attempted to cultivate any more than this one small patch. There was no attempt to clear the land and put it into meadow or any other crop other than merely the garden that existed there in the spring of '89. Mr. Edgar finally abandoned this claim and left it. From [378] there he moved down on the Missoula River to a

(Deposition of Frank Foster.)

point called Sperry. During all the time that Mr. and Mrs. Edgar were there on the claim, the principal products that were raised by Mr. Edgar were sold to the Hammond people, at Headquarters Camp. That was the only market in that neighborhood for the sale of anything. Mr. and Mrs. Edgar were on friendly terms with the Hammond people; that was for a good many years, long before they went into the Blackfoot. There was no attempt on Mr. Edgar's part to fence in his entire claim; there was no occasion for it. This fence built around the garden was a log fence. It was the most convenient stuff there was to build a fence with in that country. They did not build rail fences in that neighborhood at that time.

Q. This fence was principally just tree tops from old logs that were not a part of the tree, they would not do for timber?

A. In those days they did not cut timber like they do now; they would use logs now that they would not use then.

(Witness Continuing:) It was the refuse from the merchantable timber; there was very little whole timber. I testified that I was conversant with the fact that Mr. Edgar made proof; he did not get to complete that proof and get his title.

Q. Why was that?

A. The first obstacle was the matter of his citizenship papers; he could not produce them; he had lost them, and as he explained it to me, the records where he primarily had taken out his papers were de-

(Deposition of Frank Foster.)

stroyed in a fire at Fergus Falls, Minnesota, so he had to take out new citizen papers.

Q. Isn't it a fact that he lost that claim by reason [379] of the fact that he could not make his final proof and produce his citizenship papers to show he was a citizen of the United States and entitled to receive patent for that land?

A. He had lived in the territory of Montana then for a long time, twenty-five or thirty years, and had always had the privileges and enjoyments of a citizen, and supposed he was a citizen.

Q. Isn't it a fact that he did not secure his patent to that land solely because he could not show he was a citizen of the United States?

A. I could not say as to that.

Q. That was the trouble?

A. That is what held it back in the first place.

Q. He never did produce his citizenship papers for the Land Office?

A. I think he did. I think he took out papers.

(Witness Continuing:) I do not think it is a fact that the records of the General Land Office show that Mr. Edgar was finally denied a patent to that land because he could not prove he was a citizen of the United States. I never knew that to be a fact. If I did, it has slipped my memory. All the merchantable timber had been taken off the claim when Mr. Edgar left it. I first knew this northwest quarter of 34 as the Elijah Cunningham claim very shortly after he filed on it. He came up there and examined the land, came down to Missoula and filed on it, and

(Deposition of Frank Foster.)

came back and built a house and got me to assist him in building that house. The house was built right on top of the hill, near the west line, near the north-west corner. You could very easily see the entire quarter from the house; you might have to [380] walk a few steps over there to the brow of the hill. I was back and forth lots of times, and I never saw any timber cut off the claim, except such as I cut myself. There was no occasion for making any examination for the purpose of determining whether any timber had been cut off. I did not make any such examination. I think it was Judge F. H. Woody who attended to the making of final proof for Mr. Edgar. His proof witnesses were E. R. Kilburn, George L. Hammond, Basil Micheau and Thomas Hathaway. I am not certain whether Micheau was. These were the witnesses who were advertised. I do not remember who of the advertised witnesses went before the Land Office and made affidavits for Mr. Edgar. I think about 2,000,000 feet of timber was cut off the Edgar claim altogether. Mr. W. H. Hammond cut that timber. My recollection is that Mr. Edgar was paid \$2.50 a thousand on the river bank. The fire that swept through there did not have anything to do with Mr. Edgar leaving the claim finally. It did no damage whatever to the improvements outside of the fence.

Redirect Examination.

Mr. Edgar left the claim because he could get no title to the land from the United States Government. It was cancelled. I think Mr. Edgar intended to

(Deposition of Frank Foster.)

make it his home, I always did think so. Mr. Edgar finally took up another claim under the Government as a homestead; that was right at the mouth of the Missoula River, about ten miles east of Plains. That was after he left the Edgar claim that we have been talking about, where he left because he could not get title.

Q. You have touched on the fact of Mr. Edgar's birthplace and earlier life; in what respect is he identified with the history of Montana? [381]

A. He was one of the very earliest settlers, that is, one of the very earliest pioneers, of Montana; he was identified in the early days with the discovery of gold in the territories; he was really the discoverer of gold in Virginia City, and prominently known throughout the territory ever since then.

[Testimony of John M. Keith, for Defendant.]

JOHN M. KEITH, a witness called, sworn and examined on behalf of the defendant, testified as follows:

Direct Examination.

I reside at Missoula, Montana, and am a banker by occupation. I have been a banker at Missoula since August, 1888. I am connected with the Missoula Trust and Savings Bank, of which I am president, and have been president for the last three years. In the year 1881, I was employed by Eddy-Hammond & Company. At that time Mr. E. L. Bonner, Mr. A. B. Hammond and Mr. R. A. Eddy were the members of that firm, and at that time E. L. Bonner was engaged in business also in Deer Lodge—no other place

(Testimony of John M. Keith.)

that I recall. In Deer Lodge his partner was Mr. Robertson, who was not in any way connected with the copartnership in Missoula of Eddy-Hammond & Company. I knew of contracts that were entered into with the Northern Pacific Railroad Company for the furnishing of ties and bridge timbers and the like, in which Mr. A. B. Hammond, Mr. Eddy, Mr. Bonner and Mr. Robertson were concerned; but I never saw the contract that I know of. I knew of the firm of E. L. Bonner & Company, in which the four gentlemen last mentioned were members. The firm of E. L. Bonner & Company was entirely separate from Eddy-Hammond & Company—Mr. Robertson having an interest in the former while he had none in the latter, and the concern that had the contract with the Northern Pacific [382] Railroad was E. L. Bonner & Company. The Missoula Mercantile Company succeeded to the business of Eddy-Hammond & Company. I think the corporation called the Montana Improvement Company succeeded to the business of E. L. Bonner & Company after E. L. Bonner & Company's contract with the Northern Pacific Railroad Company. My first employment with Eddy-Hammond & Company was as a clerk behind the counter. Shortly after, in 1882, I was taken to the office, and following that up to August, 1888, I was in charge of the office and books of the Missoula Mercantile Company. I was never an employee of the Montana Improvement company. I am familiar with the two corporations known as the Blackfoot Milling and Manufacturing Company and the Big Blackfoot

(Testimony of John M. Keith.)

Milling Company, but I was never employed by either of those corporations. While I was engaged with Eddy-Hammond & Company, that firm, as a firm, was not engaged in the lumber business in any form. As far as I know, the old firm of Eddy-Hammond & Company was never engaged in the lumber business. So far as I know, the Missoula Mercantile Company was never engaged in the lumber business. With reference to the business that was conducted first by Eddy-Hammond & Company and next by the Missoula Mercantile Company, that business was a general merchandise supply business, and the Missoula Mercantile Company succeeded Eddy-Hammond & Company in the same line. At the organization of the Missoula Mercantile Company, I became a stockholder therein; I think I was one of the incorporators. I owned the stock that I had at that time, and from time to time I increased my interest in the Missoula Mercantile Company. I cannot recollect definitely the largest number of shares I ever held in that company—somewhere between two and three hundred shares. I am familiar [383] with the fact that G. W. Fenwick had a contract with the Missoula Mercantile Company; also that Henry Hammond, sometimes called W. H. Hammond, had an account with the Missoula Mercantile Company. Goods, wares and merchandise were sold to these men, respectively. These men gave orders on the Missoula Mercantile Company. I had direct charge of the cashing of those orders. I have seen numerous orders from each of them. They were drawn in

(Testimony of John M. Keith.)

regular order form. The substance of the order was this: The location of the business, the date, to the Missoula Mercantile Company, pay to the order of such and such a person so many dollars and charge the same to my account, signed by the person direct or one authorized. There were no orders drawn while Mr. Fenwick was in charge of the Bonita Mill that were signed by any other person than Mr. Fenwick, or one of his agents; none was ever signed by A. B. Hammond; none was ever signed by the Montana Improvement Company; none was ever signed by Eddy-Hammond & Company. With regard to the mill on the Blackfoot, on Bonner, the orders there were signed in a similar form, signed by W. H. Hammond, or by somebody authorized by him at the mill. As to the name in which these accounts were carried on the books, W. H. Hammond might possibly have been Henry; in that case, sometimes it was under the name of Henry Hammond and sometimes under the name of W. H. Hammond. In the case of Mr. Fenwick, it was George W. Fenwick, or G. W. Fenwick, with regular debit and credit. If an order was drawn and the money paid the individual who drew the order was charged with the amount upon the books of the concern. Other lumber companies had been accustomed to do business that way in that vicinity while George W. Fenwick and Henry Hammond were doing it. [384]

Q. What was the regular course of business with regard to customers who owned mills or who were interested in the lumber business, or in any other

(Testimony of John M. Keith.)

business, in their dealings between them and the Missoula Mercantile Company, with regard to furnishing supplies and cashing their orders at the Missoula Mercantile Company?

A. We had a number of accounts similarly handled where we either sold them goods or paid their men, their employees, on orders issued by them upon us.

(Witness Continuing:) Some of these customers were engaged in business as important and carried a larger account than did G. W. Fenwick—others less, and some of them were engaged in the business of running lumber mills on their own account. There were a number of those outside concerns that had no connection with either A. B. Hammond or with the Montana Improvement Company and that had no interest in and in which the Missoula Mercantile Company had no financial interest other than in that of furnishing them supplies and such are the concerns I have referred to in mentioning these outside mills whose business was carried on in the same way. A. B. Hammond did not, to my knowledge, have any interest whatsoever in the mill at Bonner other than as a stockholder in either the Blackfoot Milling and Manufacturing Company or the Big Blackfoot Milling Company, and so far as my knowledge goes, he did not have any interest whatsoever in the mill of George W. Fenwick at any time, either directly or indirectly.

Cross-examination.

It is possible he might have had some interest in

(Testimony of John M. Keith.)

both of these mills, and I not know it. It may have been [385] that A. B. Hammond, during the time these mills were running, was there and more or less acquainted with their operation. I do not think it is a fact that in regard to these firms in which Mr. Hammond was a partner or a stockholder, that he had a controlling and directing influence over them. He had no controlling interest in the Missoula Mercantile Company. A. B. Hammond had very largely charge and management of the business of E. L. Bonner & Company with the railroad. He was an active person, with Mr. Eddy, in the conduct of the business of Eddy-Hammond & Company and as such gave orders and directions in regard to the same. He and Mr. Eddy, jointly, helped to manage and control the operations of that concern. I don't know whether he was a controlling factor and directing factor of the Montana Improvement Company. I have no knowledge of the Montana Improvement Company other than as a name. He was an active man in the business of the Missoula Mercantile Company, sold goods, with others, as well as being associated in the management of that, like Mr. McLeod, Mr. Bonner and Mr. Eddy.

Q. Wasn't A. B. Hammond's word always taken as the final word and direction when matters were referred between him and Mr. Bonner?

A. I could not say that it was final; we accepted his instructions to a certain extent; along with the head of the institution, Mr. Bonner.

(Witness Continuing:) I do mean to tell the

(Testimony of John M. Keith.)

jury here that Mr. Hammond had no interest whatever in the Fenwick Mill. So far as I know, he had not. It is possible that Mr. A. B. Hammond might have had an interest in that mill, and I might not have [386] known it. It is also true as to the Bonner Mill.

Q. Now, Mr. Keith, they have asked you about the Missoula Mercantile Company carrying various accounts with people that were engaged in the tie and timber business in that vicinity; you know of Mr. Greenough? A. Yes, sir.

Q. The Missoula Mercantile Company carried him to the extent of some \$60,000.00, didn't it?

A. I think I said \$30,000.00 or \$40,000.00.

Q. And is it not also true that if the Missoula Mercantile Company had not carried Mr. Greenough, he could not have carried on those operations?

Defendant objected to the question on the ground that it was irrelevant, incompetent and immaterial, and not cross-examination. The Court overruled said objection, to which said ruling defendant excepted.

Defendant's Exception No. 2.

A. I think that is true of many of them in those days. There were very few persons then who had any amount of means.

(Witness Continuing:) The list that I mentioned included Mr. Fenwick and all that I spoke of. I could not say with reference to George W. Fenwick that it is a fact that he would not have been able to carry on his business at the Bonita Mill if it were

(Testimony of John M. Keith.)

not for the credit that was extended to him by the Missoula Mercantile Company, because I am certain he had an arrangement with Mr. Daly whereby he would advance him money for his work. The Missoula Mercantile Company did extend credit to Mr. Fenwick and to some extent it carried him the same as it did all of [387] these other people. So far as I know, I was not present when they closed between Fenwick and Hammond for the purchase of the Bonita Mill. The purchase price was paid in notes. The Missoula Mercantile Company took over the notes and handled them. These notes were given by Fenwick to Fred A. Hammond. The notes were made payable at different periods.

Q. While Mr. Bonner and Mr. Eddy were absent from Missoula, isn't it a fact that operations were carried on, and that Mr. Hammond was in control?

A. While they were absent?

Q. Yes, while they were away.

A. To a certain extent. Mr. McLeod was also active in the business.

The COURT.—Counsel is asking you when Mr. Eddy was absent.

A. Yes, he surely was.

(Witness Continuing:) I will not say that even when the others were there they all took orders from Mr. Hammond. I think they discussed matters and decided upon certain lines.

Q. But they always went to Mr. Hammond to discuss those matters and talk them over?

A. And Mr. Bonner was the head.

(Testimony of John M. Keith.)

Redirect Examination.

When these notes that G. W. Fenwick gave to Fred Hammond were taken over by the Missoula Mercantile Company, it was in settlement of Fred Hammond's account with the Missoula Mercantile Company. The notes were paid by Mr. Fenwick. As far as my knowledge goes, A. B. Hammond did not have any interest in the mill while Fred A. Hammond was [388] operating it at Bonita. As to the banking facilities that were in the country at that time, there was one bank, a very small institution, with a capital of \$50,000.00, and with deposits of probably \$150,000.00. This was in Missoula. If the Missoula Mercantile Company had not conducted the credit system that it did, financial backing could not have been gotten by the number of persons in the different lines of business at that time through the small banking institution there. That was the only bank in Missoula, and along in '80, '82 and '83, Missoula had less than 1,000 inhabitants. The older cities in Montana at that time were Butte, Helena and Virginia City. They had banks, but they were from one hundred and twenty-five to one hundred and fifty miles distant. There was no other bank in the western part of the State. With relation to the Missoula Mercantile Company's office, the Blackfoot Milling and Manufacturing Company had an office on the second story of the building in which the Missoula Mercantile Company was. The Big Blackfoot Milling Company may have been there for a short time in the same building, but later it was taken to

(Testimony of John M. Keith.)

Bonner, where the operations were carried on. So far as I know, Mr. Fenwick's office was at the mill. Mr. Winstanley had charge of the Blackfoot Milling and Manufacturing Company's books. He was on the second story of the same building at all times, and that was separate and apart from the office of the Missoula Mercantile Company. It had an outside stairway leading to it.

Q. Do you know whether or not Mr. Winstanley acted as the agent for any other mills?

A. He had charge of the books in the same office for a man by the name of H. B. Haycock, for Mr. Fenwick, and [389] I think he had one or two others. I do not recollect definitely. I know, however, he had charge of that matter for Haycock and Fenwick. I think he had to do with Henry Hammond's books. Haycock ran a sawmill, had a sawmill business. His business had nothing whatever to do with the Missoula Mercantile Company other than as it was a patron of that company. Haycock had two or three locations for his mill. One of them was in the Hellgate country, and the other one was up in the Bitter Root Valley. So far as I know, Mr. A. B. Hammond was not in any way whatever connected with Haycock's mill or business.

Recross-examination.

To a very large extent all of these companies that the Missoula Mercantile Company backed by credit so that they could handle their business, were engaged in the lumbering business and the tie business. C. P. Higgins, who was the founder of the town of

(Testimony of John M. Keith.)

Missoula, Mr. Kennett, who had filled the position of cashier for many years, and Mr. Houser, were the main stockholders in that bank at Missoula. In the early days it had no connection with the Missoula Mercantile Company. The Missoula Mercantile Company did not become interested in this bank, nor did the people interested in the Missoula Mercantile Company become interested in this bank, until the latter part of 1887 or the early part of 1888, and then as a minority stockholder. There were banks at Butte and Helena. I could not say they had very large deposits at that time. One bank in Helena and one in Butte were reputed to be banks of wealth and importance.

Q. But the Missoula Mercantile Company endeavored, did it not, to get under its control all the handling of these small mills by outside people? [390]

A. It endeavored to secure all the business it could.

(Witness Continuing:) It also endeavored to get hold of the accounts of these millmen and have them buy their supplies at the Missoula Mercantile Company and have them give their orders on it, and the Missoula Mercantile Company carried as many of these accounts as they could secure. It was the aim and object of the Missoula Mercantile Company, during that time, to make itself the banker as well as the merchant for these little companies in the interest of its business, and I think it is quite true that many of them could not have run if they had not done it. In 1887 I quit the employment of the Mis-

(Testimony of John M. Keith.)

soula Mercantile Company and went to the Missoula National Bank, which is the same bank that the Hammonds acquired an interest in in 1887, and I continued in the employment of that bank up until two or three years ago.

[Testimony of W. H. Hammond, for Defendant.]

W. H. HAMMOND, a witness, called and sworn on behalf of the defendant, testified as follows:

Direct Examination.

I reside in Oakland, California, and have so resided since 1889; my full name is William Henry Hammond, and I am generally known by my friends and intimates as Henry Hammond. I first became acquainted with the Blackfoot River in 1882 and 1883. I constructed a mill on the Blackfoot River in 1885. I knew the firm of Eddy-Hammond & Company. I knew Mr. Bonner, Mr. A. B. Hammond and Mr. Eddy. I was never a member of that firm; I was never directly or indirectly interested in its profits; I knew the Missoula Mercantile Company from the time of its organization; I was never a [391] stockholder in the Missoula Mercantile Company; I was never directly or indirectly interested in the profits of the Missoula Mercantile Company; I have heard of the Montana Improvement Company; I was never a stockholder in it, nor was I ever directly or indirectly interested in its profits. In 1885, when I built the mill upon the Blackfoot, I acquired a dam at or about the time of the inception of my enterprise. I acquired that dam from the Mon-

(Testimony of W. H. Hammond.)

tana Improvement Company. The transaction evidencing it was in writing.

The defendant thereupon offered in evidence, plaintiff's counsel stating he had no objection thereto, deed from the Montana Improvement Company Ltd., to William H. Hammond, dated the 3d day of July, 1885; acknowledged on the 8th day of January, 1886, and recorded on the 8th day of January, 1886, in Book "G" of Deeds, at page 433, records of Missoula County, Montana, and the said deed was marked Defendant's Exhibit "A," and is in the words and figures following, to wit:

[Defendant's Exhibit "A"—Deed Dated July 3, 1885, The Montana Improvement Co., Ltd., to Wm. H. Hammond.]

**THE MONTANA IMPROVEMENT COMPANY
(LIMITED)**

to

WM. H. HAMMOND.

This indenture made the third day of July, in the year of our Lord one thousand eight hundred and eighty-five, between the Montana Improvement Company (Limited), a corporation by and existing under the laws of Montana Territory, the party of the first part, and William H. Hammond, of Blackfoot, Missoula County, Montana Territory, the party of the second part, Witnesseth: That the said party of the first part, for and in consideration of the sum of three hundred dollars, lawful money of the United States, to it in hand paid by the said party of the second part, the receipt of which is hereby acknowl-

edged, [392] does remise, release and forever quit-claim unto the said party of the second part and to his heirs and assigns, the following described real estate, situated in the County of Missoula, Territory of Montana, to wit: One (1) cabin and the remainder of what is known as the Blackfoot dam, situated and being on the northwest quarter (NW. $\frac{1}{4}$) of section numbered twenty-two (22), in township numbered thirteen (13) north and range numbered eighteen (18) west, of the principal meridian of Montana Territory, in Missoula County, Montana Territory, together with all the tenements, hereditaments and appurtenances thereunto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part of, in or to the said premises and every part and parcel thereof. To have and to hold, all and singular, the said premises, with the appurtenances thereunto belonging unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set its hand and official seal the day and year first above written.

THE MONTANA IMPROVEMENT COM-
PANY, LIMITED, (Seal)

R. A. EDDY, (Seal)

Vice-President.

Signed, sealed and delivered in the presence of

Attest: THOMAS G. HATHEWAY, (Seal)

Secretary.

Territory of Montana,
County of Missoula,—ss.

On this eighth day of January, A. D. 1886, before me, [393] John L. Sloane, a notary public in and for said Territory, came R. A. Eddy, Vice-president of the Montana Improvement Company (Limited), personally known to me to be the person described in and who signed the foregoing deed as grantor and who acknowledged to me that he was the duly authorized officer of said Company and that he had executed the same freely and voluntarily for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in Missoula, M. T., the day and year first above written.

[Seal]

JNO. L. SLOANE,
Notary Public.

I certify that I received this instrument for record on the 8th day of January, 1886, at 3:15 o'clock P. M.

ALVIN LENT,
County Recorder.
F. H. Schmidt,
Deputy.

State of Montana,
County of Missoula,—ss.

I, W. J. Babington, County Clerk and Recorder in and for the said County of Missoula, State of Montana, hereby certify the annexed and following to be a full, true and correct copy of a certain deed from Montana Improvement Company (Limited) to William H. Hammond, filed for record January 8,

(Testimony of W. H. Hammond.)

1886, at 3:15 o'clock P. M. and recorded in Book "G" of Deeds, at page 433, Records of Missoula County, Montana, together with the indorsement thereon, as the same appears of record in this office; that I am the legal keeper of such record and my office is a public office not pertaining to any court.

Witness my hand and the seal of said Missoula County, affixed this 6th day of January, A. D. 1913.

[Seal]

W. J. BABINGTON,

County Clerk and Recorder. [394]

(Witness Continuing:) This Blackfoot dam was near the junction of the Hellgate and the Blackfoot Rivers and is eleven miles east of Missoula.

Q. At the time that you made this purchase, was it an out and out straight business transaction, whereby it was intended that the title, both legal and equitable, should pass to you, or was it intended and agreed among you that you should take title to hold it for some other concern, person or corporation?

Plaintiff objected to the question upon the ground that it is leading and suggestive, and upon the further ground that the instrument speaks for itself as to what it is. Thereupon the court sustained the plaintiff's objection to said question, and defendant noted an exception.

Defendant's Exception No. 3.

(Witness Continuing:) After the acquisition of that property, I built a mill upon the land near to the dam that is referred to in the deed just read. I constructed a dam there. That became what is known as the Bonner mill. The mill was built on section

(Testimony of W. H. Hammond.)

22, township 13 north, range 18 west; and the spot was known as the Blackfoot Mill, afterwards as the Bonner Mill. The name of Bonner was first applied to that spot in 1888, and up to that time it was known as the Blackfoot Mill. I proceeded to operate that mill after its construction until the time that the Blackfoot Milling and Manufacturing Company was incorporated. I operated it individually. I had no copartners in the business; no one else either directly or indirectly shared in the profits of my transactions. I [395] sold the lumber that was produced by that mill that I was operating. I sold it principally in Butte, the mines at Butte, and the smelters at Anaconda. I made my contracts of sale. I continued to operate that mill until February, 1888, when the Company was incorporated. I was the sole owner of that mill in February, 1888, and had been such sole owner at all times prior thereto from the time of its construction. In February, 1888, I disposed of it to the Blackfoot Milling and Manufacturing Company. I became a stockholder in the Blackfoot Milling and Manufacturing Company at the time of the transfer; I had about a quarter interest or share of stock in the Blackfoot Milling and Manufacturing Company. There was other consideration moving to me, in addition to the issuance to me of one-quarter of the stock, for my transfer to the Blackfoot Milling and Manufacturing Company of that property. It was understood that I should have a lease on the property, the mill, for two (2) years, with a privilege of three (3). Such a lease

(Testimony of W. H. Hammond.)

was actually entered into.

Q. I show you a document dated the 10th day of February, 1888, purporting to be between the Blackfoot Milling and Manufacturing Company and William H. Hammond, and I call your attention to the signature, William H. Hammond, is that your signature? A. It is.

(Witness Continuing:) That document was executed February, 1888. I am familiar with the other signature thereto; it is that of Charles H. McLeod. He was at that time president of the Blackfoot Milling and Manufacturing Company. That document is the lease to which I have referred.

Mr. WHEELER.—I offer the document in evidence. [396]

Plaintiff objects to the admission in evidence of said document, for the reason that the document does not bear on its face any authority from the Blackfoot Milling and Manufacturing Company for its execution; it is merely signed by the president; it is not acknowledged before a notary public and it is an instrument affecting the right of possession to real property for more than one year. There is nothing to show that it is the instrument that it purports on its face to be. In other words, the instrument purporting to be executed by the Blackfoot Milling and Manufacturing Company does not bear the seal of that company on it.

The COURT.—The objection will be sustained.

Mr. WHEELER.—This is the document under which the witness took possession.

(Testimony of W. H. Hammond.)

ment was property executed; if it was in writing, it must be shown that it was duly executed or else, of course, you cannot give its contents.

Mr. WHEELER.—Upon that question, counsel and the court differ. I think it is admissible. It shows that it is a document under which this gentleman took possession of this property. It goes to the question of his good faith in everything he did, and in so far as his acts may be imputable to any party to this action, I think it is a proper matter of inquiry.

The COURT.—The question of good faith is not involved in the proposition before the Court at all. Its admissibility in evidence is an absolutely different thing. Of course, we are all circumscribed by the rules of evidence.

Thereupon the Court sustained the objection of the plaintiff and defendant excepted to the ruling of the Court.

Defendant's Exception No. 5. [399]

(Witness Continuing:) I operated that property under the lease which I have mentioned in my testimony three years, possibly a little longer.

Q. While you were operating the property under that lease that you have testified to, state how much rental you paid.

Objected to by the plaintiff on the ground that the lease itself should be the evidence of the amount of rental that was to be paid.

Mr. WHEELER.—I am asking him what he paid.

The COURT.—Objection sustained. You have

(Testimony of W. H. Hammond.)

yourself shown the lease to be in writing; to which ruling of the court defendant duly excepted.

Defendant's Exception No. 6.

Q. Did you pay rental for this property?

A. I did.

Q. To whom did you pay rental?

Objected to by the plaintiff on the ground that the lease itself should be the evidence of the person to whom the rental was paid.

Objection sustained by the Court; to which ruling defendant duly excepted.

Defendant's Exception No. 7.

(Witness Continuing:) I cut and manufactured lumber during the years I was operating that property under a lease. I sold the lumber that I manufactured. Neither the Montana Improvement Company; nor the Missoula Mercantile Company nor A. B. Hammond sold it for me. At the expiration of my lease I had no renewal of same.

Q. Was there any provision of any kind for the extension of the original lease which you have mentioned? [400]

Plaintiff objects to the question on the ground that it calls for the giving of the provisions of the lease.

Objection sustained by the Court; to which ruling defendant duly excepted.

Defendant's Exception No. 8.

Q. Did you ever operate that property under what purported to be an extension of any lease?

Mr. HALL.—We interpose the same objection.

(Testimony of W. H. Hammond.)

The COURT.—Objection sustained.

Mr. WHEELER.—Exception.

Defendant's Exception No. 9.

(Witness Continuing:) I am not entirely clear, but I believe that after the expiration of the lease, according to its terms, which I have testified to, I believe I did further operate that property. I am not clear whether I operated the property under a lease, but I think I did. At any rate, I did operate that property until the Big Blackfoot Milling Company was organized. I think that company was organized in the latter part of 1891. After the organization of that company, I was its president and manager, and its books were kept at Bonner. The books of the Blackfoot Milling and Manufacturing Company were never kept at Bonner; they had been kept at Missoula. While I was conducting this property, the books were kept in Missoula during the construction of the mill and up until the time that I took the lease. While I was operating as an individual, Mr. Winstanley kept my books in Missoula. When I was operating under the lease that I have referred, Mr. Winstanley kept the books of the Blackfoot Milling and Manufacturing Company. My own books under the lease were kept at Bonner by a man named C. W. Young. I employed Mr. Young. Mr. Winstanley [401] was paid from 1885 until 1888 for the services he rendered in keeping the books. I was president and manager of the Big Blackfoot Milling Company from the time of its organization until the close of 1895, the last date

(Testimony of W. H. Hammond.)

mentioned in the complaint here, and for that matter, until the company was sold out. The stock of the company was sold. I was a stockholder in the Big Blackfoot Milling Company. I don't just remember the number of shares that I owned; I know I owned about a quarter. I testified that I owned about a quarter of the Blackfoot Milling and Manufacturing Company. When we sold out, the Anaconda Mining Company bought the stock. I sold my stock to the Anaconda people. During the time I operated this mill at Bonner for the Big Blackfoot Milling Company and was its president, I was paid a salary by the Big Blackfoot Milling Company. My salary was two hundred dollars (\$200.00) a month during the entire period of time. During the time that I was operating the property as a lessee, I received no salary. Mr. A. B. Hammond never at any time had, either directly or indirectly, in my name any interest in either the Big Blackfoot Milling Company or the Blackfoot Milling and Manufacturing Company. He never directly or indirectly at any time had any interest in the one-quarter, or thereabouts, which I say I owned. He never at any time either directly or indirectly had any share or interest in the profits of the business which may have been earned during the time that I was operating it individually or during the time that I was operating it as a lessee. Mr. A. B. Hammond had nothing to do with the making of any contract for the sale of lumber or timber of the Big Blackfoot Milling Company during the years I was president of the [402]

(Testimony of W. H. Hammond.)

company. Mr. A. B. Hammond had nothing to do with the business while I was conducting it for myself upon the Blackfoot. He had nothing whatever to do with it while I was conducting it as a lessee. While I was conducting the business as president and manager at Bonner for the Big Blackfoot Milling Company, A. B. Hammond had nothing to do with the management of it any more than any other stockholder. I managed the business. I am not certain whether or not A. B. Hammond was a member of the board of directors of the Big Blackfoot Milling Company at that time. A. B. Hammond gave me no instruction of any kind or character concerning my management of that mill. I managed the mill myself. I ran it. The town of Bonner is about twelve miles down the river from where the Longley claim is. During all this period, our operations extended between sixty-five and seventy-five miles along the Blackfoot River. There was never any other case brought by the Government of the United States against me or anybody else in connection with the work that was done while I was operating either as an individual or a lessee or while I was operating as manager of the Big Blackfoot Milling Company along that seventy or seventy-five miles of river other than this present action. I never did any logging upon any portion of the northwest quarter of section 28, township 14 north, range 16 west, while I was operating that property. Nor did I while I was operating it under the lease I have referred to; nor did I while I was acting as presi-

(Testimony of W. H. Hammond.)

dent and manager of the Big Blackfoot Milling Company, but during the time last mentioned I bought some logs from Longley that he cut himself—that was sometime in the winter of 1892 or 1893. This was some timber that had [403] been burned and he had cut it and I bought the logs. There were no other logs that I purchased from that section or that I took to our mill at any time while I was operating it either for myself or the Big Blackfoot Milling Company. I know section 26, in township 14 north range 16 west. I know where sections 23 and 25 of this township and range are. They were logged in 1888 or 1889. I did not in 1889 nor at any time prior to October 22, 1894, cause any logging to be done on the northeast quarter of section 26, and I never directed anybody to cut logs there. I know that my contractor had cut logs for building a bridge and building a camp on section 26. These men were Cunningham and McNamara. I remember taking them to task for having cut logs there. I had given those men instructions with regard to observing the lines, namely, that they should not cut over the lines on the land that was not owned by the company. At that time we had an arrangement with the railroad company whereby we had the right to cut on the odd sections, back from the river, within the limits of the railroad grant, as far as we saw fit. Neither the Blackfoot Milling and Manufacturing Company nor the Big Blackfoot Milling Company ever owned any part of section 20, in township 14 north, range 15 west. I did not any

(Testimony of W. H. Hammond.)

within the one dollar a thousand group and not the fifty cent group.

Defendant thereupon offered and read in evidence a certified copy of a letter sent out by the Department of the Interior, concerning the Edgar claim, under date of May 13, 1886. The said letter was thereupon marked Defendant's Exhibit "B," and is in the words and figures following, to wit:

[Defendant's Exhibit "B"—Letter, Dated May 13, 1886, H. S. Howell to Messrs. Woody & Marshall.]

DEPARTMENT OF THE INTERIOR.

UNITED STATES LAND OFFICE.

Helena, Montana, May 13, 1886.

Messrs. Woody & Marshall,

Missoula.

Gentlemen: I return herewith final pre-emption proof of Henry F. Edgar, as the proofs show him to be a naturalized citizen, and he does not furnish the required declaration of intention. I enclose my check #204 [406] for \$400, his payment. Should you return this check with papers to this office, please endorse it.

Very respectfully,

H. S. HOWELL.

We hereby certify that the foregoing has been compared with the records of this office and is a full, true and correct copy.

STEPHEN CARPENTER,

Register.

(Witness Continuing:) I have testified that all of

(Testimony of W. H. Hammond.)

the remainder of the timber was taken off the Edgar claim in 1886. I heard this letter read from the Register of the Helena Land Office, dated May 13, 1886, to Woody and Marshall. At the time that that timber was taken off by me, I understood that Edgar had proved up upon his claim. I knew that Edgar went with witnesses to prove up upon his claim. It was not until late in the fall of 1886 that I first learned there was a question about Mr. Edgar getting title to his property. It was after the last cutting of timber upon that claim—which timber went to the Bonner Mill, under my arrangements with Edgar—that I learned there was a question about Mr. Edgar getting title to his property. I know the Cunningham claim in section 34, township 14 north, range 14 west. That claim corners on the Edgar claim. The Cunningham claim was cut in the winter of 1892-1893. I think there was a part of that claim cut in 1891-1892 and the balance was cut in 1892-1893. No timber was cut before March 19, 1890. All the timber that I was concerned with was taken from the Cunningham claim after 1890. There was no cutting for logs upon that section which went to [407] the Bonner Mill prior to April 1, 1890. I remember the claims called the Silvey claims; I know where they are. They are *are* located in section 22, township 14 north, range 14 west. Referring to the east half of the northeast quarter of said section 22, with reference to the Silvey claim, it stands east of the Silvey claim. I know there has been cutting upon the east half of the northeast quarter. It was

(Testimony of W. H. Hammond.)

cut by Boyd in the winter of 1892-3. That was during the time of the Big Blackfoot Milling Company and at a time when I was manager of that company. At the time it was cut, the Big Blackfoot Milling Company had no title to that eighty acres of land. I do not know how Boyd come to cut it. I did not give him any directions to cut it. If it was cut by Boyd at that time, no directions, to my knowledge, were given to Boyd by anybody to cut it. My company did not own the Silvey claim at the time this cutting appears to have been done by Boyd. Boyd was cutting on the Silvey claim. I gave Boyd directions with regard to obeying the lines. If Boyd did cut over the line and cut on that eighty acres of land, he did not do so with my knowledge, approval or consent at any time. It was two years ago when I went up there, that I first knew that Boyd had cut in that eighty acres. I went up and went over the ground and I saw there was a trespass, and I spoke to Boyd about it and he claimed that he had not trespassed there. This was after this suit was brought. I did not know until this suit was brought that there had ever been any cutting there. I am familiar with the so-called Kelly claim in section 18, township 13 north, range 14 west. I first knew of that claim when I went there and estimated it before I bought it from Kelly. I went on the ground myself and estimated that land. [408] I bought the land for the Big Blackfoot Milling Company. John Cunningham was with me at the time I went upon the ground. I went over the claim and looked at the

(Testimony of W. H. Hammond.)

timber with a view of buying it. That was in the early fall of 1896. I bought the claim after I estimated it; and when I went over it the timber was there and there had been no cutting upon that property at all for logging, or any other cutting to my knowledge. I went to the lines of the claim at that time. After this claim was purchased by me for the Big Blackfoot Milling Company, it was logged that same year. It was logged the winter or fall and winter of 1896-7. I know the claim called the Tuchenhausen claim, in section 18, township 14 north, range 15 west. This claim was not cut at any time prior to July 12, 1890. The cutting was done on the Tuchenhausen claim in the winter of 1892-3. At the time that cutting was done the claim belonged to me. I purchased it from Tuchenhausen. And at the time I purchased it, I made an examination of the property. At the time I purchased it there had been no cutting upon the property other than for the improvements—his house and barn and fences. I purchased that in the summer of 1891—July 27, 1891. Neither I nor any of the corporations with which I was concerned cut off any of the timber from the Tuchenhausen claim prior to its purchase by me on July 27, 1891.

Thursday, January 23, 1913.

Defendant thereupon offered and read in evidence the petition of Blackfoot Milling and Manufacturing Company addressed to the Honorable Secretary of the Interior, dated July 8, 1891, for leave to cut timber from certain lands, which said petition is in the words and figures following: [409].

[**Exhibit—Petition, Dated July 8, 1891—Blackfoot
Milling & Mfg. Co to Secretary of the Interior.**]

Missoula, Mont., July 8, 1891.

THE HONORABLE, Secretary of the Interior,
Washington, D. C.

Sir:—Pursuant to the provisions of Sections Six, seven and eight, of the Department Circular, dated May 5th, 1891, prescribing rules and regulations governing the use of timber on the public domain of the United States, under the Act of March 3rd, 1891, entitled: "An Act to amend Section 8, of An Act approved March 3rd, 1891, entitled An Act to Repeal Timber Culture Laws and For Other Purposes," we very respectfully make application for the right, privilege and authority to cut and remove the pine, fir and tamarack timber from the following described public lands, to wit:

A certain piece of land described as follows: Being a piece of land one mile square on the Blackfoot River, beginning at a point four miles east of the S. E. corner of Sec. 14, Tp. 13 N. R. 19 W., said tract of land containing 640 acres, and which, when surveyed, will be Sec. 14, Tp. 13 N. R. 18 W., and having thereon about 500,000 feet of pine, fir and tamarack timber. Also that certain other tract of land being one mile square beginning at a point five miles east of the S. W. Corner of Sec. 12, Tp. 13 N. R. 19 W., said tract containing 640 acres, and which, when surveyed, will be Sec. 12, Tp. 13 N. R. 18 W., and the same having thereon about 300,000 feet of pine, fir and tamarack timber. Also that certain other tract of

land one mile square beginning at a point four miles W. from the S. W. Corner of Sec. 7, Tp. 13 N. R. 16 W., said tract containing 640 acres, and having thereon about 1,000,000 feet of pine, fir and [410] tamarack timber, and which, when surveyed, will be Sec. 8, (x) Tp. 13 N. R. 17 W. Also that certain other tract of land one mile square beginning at a

(x)
See
below
duplicate

point two miles W. from the S. W. corner of Sec. 7, Tp. 13 N. R. 16 W., said tract

containing 640 acres, and having thereon about 1,000,000 feet of pine, fir and tamarack timber, and which, when surveyed, will be Sec. 8, (x) Tp. 13 N. R. 17 W. Also that certain other tract of

(x)
See
above
duplicate

land one mile square beginning at a point two miles W. from the S. W. corner of Sec. 7, Tp. 13 N. R. 16 W., containing 640 acres, and having thereon about 500,000 feet of pine, fir and tamarack timber, and which, when surveyed, will be Sec. 10, Tp. 13 N. R. 17 W. Also that certain other tract of land one mile square beginning at a point one mile W. of the S. W. corner of Sec. 6, Tp. 13 N. R. 16 W., said tract containing 640 acres, and having thereon about 2,000,000 feet of pine, fir and tamarack timber, and which, when surveyed, will be Sec. 2, Tp. 13 N. R. 17 W. Also that certain other tract of land one mile square beginning at a point one mile W. from the S. W. corner of Sec. 30, Tp. 14 N. R. 16 W., containing 640 acres, and having thereon about 2,000,000 feet of pine, fir and tamarack timber, and which, when surveyed, will be Sec. 26, Tp. 14 N. R. 17 W. Also that certain other tract of land one mile square beginning at the S. W. corner of Sec.

19, Tp. 14 N. R. 14 W., said tract containing 640 acres, and which, when surveyed, will be Sec. 24, Tp. 14 N. R. 17 W., and having thereon about 2,000,000 feet of pine, fir and tamarack timber. Also that certain other tract of land one mile square beginning at the S. W. corner of Sec. 7, Tp. 13 N. R. 16 W., said tract containing 640 acres, and which, when surveyed, will be Sec. 12, Tp. 13 N. R. 17 W., and having thereon [411] about 2,500,000 feet of pine, fir and tamarack timber. Also the N. W. quarter of Sec. 6, Tp. 13 N. R. 16 W., containing 160 acres, and having thereon about 1,000,000 feet of pine, fir and tamarack timber. Also E. half of Sec. 32, Tp. 14 N. R. 16 W., containing 320 acres, and having thereon about 1,000,000 feet of pine, fir and tamarack timber. Also the S. E. quarter of Sec. 28, Tp. 14 N. R. 16 W., containing 160 acres, and having thereon about 750,000 feet of pine, fir and tamarack timber. Also Sec. 20, Tp. 14 N. R. 16 W., containing 640 acres, and having thereon about 500,000 feet of pine, fir and tamarack timber. Also Sec. 22, Tp. 14 N. R. 16 W., containing 640 acres, and having thereon about 500,000 feet of pine, fir and tamarack timber. Also the S. half and the S. half of the N. W. quarter and the N. W. quarter of the N. W. quarter, and the S. W. quarter of the N. E. quarter of Sec. 26, Tp. 13 N. R. 14 W., containing 480 acres, and having thereon about 1,000,000 feet of pine, fir and tamarack timber. Also the north half and the east half of the S. E. quarter, and the S. W. quarter of the S. E. quarter, and the S. E. quarter of the S. W. quarter of Sec. 24, Tp. 14 N. R. 16 W., containing 480 acres, and having thereon

about 1,000,000 feet of pine, fir and tamarack timber. Also Sec. 14, Tp. 14 N. R. 16 W., containing 640 acres, and having thereon about 500,000 feet of pine, fir and tamarack timber. Also, all of Sec. 18, except the S. E. quarter, Tp. 14 N. R. 15 W., said tract containing 480 acres, and having thereon about 750,000 feet of pine, fir and tamarack timber. Also all of Sec. 20, except the N. half of the N. E. quarter and N. half of N. W. quarter, Tp. 14 N. R. 15 W., containing 480 acres, and having thereon about 250,000 feet of pine, fir and tamarack timber. Also Sec. 8, [412] Tp. 14 N. R. 15 W., containing 640 acres, and having thereon about 100,000 feet of pine, fir and tamarack timber. Also Sec. 22, Tp. 14 N. R. 15 W., containing 640 acres, and having thereon about 500,000 feet of pine, fir and tamarack timber. Also Sec. 28, Tp. 14 N. R. 15 W., containing 640 acres and having thereon about 250,000 feet of pine, fir and tamarack timber. Also Sec. 34, Tp. 14 N. R. 15 W., containing 640 acres and having thereon about 1,200,000 feet of pine, fir and tamarack timber. Also Sec. 2, Tp. 13 N. R. 15 W., containing 640 acres, and having thereon about 1,000,000 feet of pine, fir and tamarack timber. Also Sec. 12, Tp. 13 N. R. 15 W., containing 640 acres, and having thereon about 300,000 feet of pine, fir and tamarack timber. Also Sec. 8, Tp. 14 N. R. 14 W., containing 640 acres, and having thereon about 1,000,000 feet of pine, fir and tamarack timber. Also Sec. 6, Tp. 14 N. R. 14 W., containing 640 acres, and having thereon about 1,000,000 feet of pine, fir and tamarack timber. Also Sec. 30, Tp. 15 N. R. 14 W., containing 640 acres, and

having thereon about 1,500,000 feet of pine, fir and tamarack timber. Also Sec. 2, Tp. 14 N. R. 14 W.,

#Duplicate. See next page.

containing 640 acres, and having thereon about 500,000 feet of pine, fir and tamarack timber. Also Sec. 34, Tp. 14 N. R. 14 W., containing 640 acres, and having thereon about 1,500,000 feet of pine, fir and tamarack timber. Also Sec. 26, Tp. 14 N. R. 14 W., containing 640 acres, and having thereon about 1,000,000 feet of pine, fir and tamarack timber.

#Duplicate. See next page.

Also Sec. 10, Tp. 14 N. R. 14 W., containing 640 acres, and having thereon about 1,000,000 feet of pine, fir and tamarack timber. Also Sec. 14, Tp. 14 N. R. 14 W., containing 640 acres, and having thereon about 1,000,000 feet of pine, fir and tamarack timber. Also Sec. 6, Tp. 13 N. R. 14 W., containing 640 acres, [413] and having thereon about 1,500,000 feet of pine, fir and tamarack timber. Also Sec. 18, Tp. 15 N. R. 14 W., containing 640 acres, and having thereon about 2,000,000 feet of pine, fir and tamarack timber.

Also Sec. 4, Tp. 13 N. R. 14 W., containing 640 acres, and having thereon about 2,000,000 feet of

#Duplicate. See below.

pine, fir and tamarack timber. Also Sec. 30, Tp. 15 N. R. 13 W., containing 640 acres, and having thereon about 300,000 feet of pine, fir and tamarack timber.

#Duplicate. See below.

Also Sec. 32, Tp. 15 N. R. 13 W., containing 640 acres, and having thereon about 400,000 feet of pine, fir and tamarack timber. Also Sec. 8, Tp. 15 N. R. 12 W., containing 640 acres, and having thereon about 2,000,000 feet of pine, fir and tamarack timber.

Also Sec. 4, Tp. 15 N. R. 12 W., containing 640 acres, and having thereon about 1,000,000 feet of pine, fir

#Duplicate. See previous page.

and tamarack timber. Also Sec. 10, Tp. 14 N. R. 14 W., containing 640 acres, and having thereon about 300,000 feet of pine, fir and tamarack timber.

#Duplicate. See previous page.

Also Sec. 2, Tp. 14 N. R. 14 W., containing 640 acres, and having thereon about 500,000 feet of pine, fir and

#Duplicate. See above.

tamarack timber. Also Sec. 30, Tp. 15 N. R. 13 W., containing 640 acres, and having thereon about 300,000 feet of pine, fir and tamarack timber. Also

#Duplicate. See above.

Sec. 32, Tp. 15 N. R. 13 W., containing 640 acres, and having thereon about 400,000 feet of pine, fir and tamarack timber. Also Sec. 2, Tp. 15 N. R. 12 W., containing 640 acres, and having thereon about 2,000,000 feet of pine, fir and tamarack timber. Also Sec. 20, Tp. 15 N. R. 13 W., containing 640 acres, and having thereon about 500,000 feet of pine, fir and tamarack timber. Also Sec. 28, Tp. 14 N. R. 12 W., containing 640 acres, and having thereon about 1,500,000 feet of pine, fir and tamarack timber. Also Sec. 34, Tp. 14 N. R. 12 W., containing 640 [414] acres, and having thereon about 800,000 feet of pine, fir and tamarack timber. Also Sec. 30, Tp. 15 N. R. 11 W., containing 640 acres, and having thereon about 1,500,000 feet of pine, fir and tamarack timber. Also Sec. 20, Tp. 15 N. R. 11 W., containing 640 acres, and having thereon about 300,000 feet of pine, fir and tamarack timber, situated in the counties of Missoula and Deer Lodge, in the State of Montana.

The lands above described are non-mineral in character and most of them will be valuable for settlement of agricultural and grazing purposes when the timber is removed.

The timber now growing on said lands comprises pine, fir and tamarack, in nearly or about equal proportions, of which it is the purpose and desire of the applicant to cut and remove only the merchantable saw log pine, fir and tamarack, leaving all trees under twelve inches in diameter for use of the settlers for fire wood, fences and other necessary purposes. The purpose for which the timber to be taken by applicant is required, is for the manufacture of the same into lumber laths, &c., and such other timber products as may be necessary for the encouragement of settlement and the development of the natural resources of the State of Montana, and I, the said applicant, here agree that all of said timber and its products shall be utilized for the purpose named, and none of it shall be exported or transported out of the State of Montana, and such special restrictions as may be prescribed by the Department confining the use of the timber for the public good in this state will be strictly and fully complied with. The lands described in the application are not situated at the head-waters of streams in sections where it would be desirable that the timber thereon should be reserved [415] for climatic or economic reasons or for the public good, but, on the contrary, the use of the timber is a public necessity, in corroboration of which I transmit herewith affidavits of *bona fide* settlers

who reside within the limits of the lands described in the application.

Very respectfully,
BLACKFOOT MILLING & MFG. CO.,
By THOS. C. MARSHALL,
Vice-President.

State of Montana,
County of Missoula,—ss.

Thos. C. Marshall, being duly sworn, on his oath deposes and says that the applicant mentioned and described in the accompanying affidavits, and who signed the foregoing application, is a corporation, duly organized and existing under the laws of Montana, organized for doing the business of manufacturing lumber, laths, etc., for the use of the settlers and citizens of the State of Montana in the necessary building and development of the natural resources of said State; that this applicant is an officer thereof, to wit, Vice-President, that he knows the contents of the foregoing application and that the same is true to the best of his knowledge, information and belief.

[Seal]

THOS. C. MARSHALL.

Subscribed and sworn to before me this the eighth day of July, 1891.

GUST. MOSER,
Notary Public.

State of Montana,
County of Missoula,—ss.

H. W. Harrison, S. H. Newport, P. Demrous and Milton Hammond, being duly sworn, on their oaths depose and say that they [416] are acquainted with the contents of the foregoing application of the

Blackfoot Milling & Manufacturing Co., and know the lands therein described, that the statements contained in the said application, affidavits, etc., are personally known to those affiants and are true.

H. W. HARRISON.

S. H. NEWPORT.

P. DEMROUS.

MILTON HAMMOND.

Subscribed and sworn to before me this the ninth day of July, 1891.

[Seal]

GUST. MOSER,

Notary Public.

[Endorsed]: 11,686. Department of the Interior. L. & R. R. Div., Receiver. Dec. 14, 1891. A. Application. 1891. 92824. 2.

Defendant thereupon offered and read in evidence the amended petition of Blackfoot Milling and Manufacturing Company addressed to Honorable Secretary of the Interior, dated September 23, 1891, for leave to cut timber from certain lands, which said amended petition is in the words and figures following, to wit:

[Exhibit—Amended Petition Dated September 23, 1891, of Blackfoot Milling & Manufacturing Co. to Secretary of Interior.]

Missoula, Montana, September 23d, 1891.

HONORABLE SECRETARY OF THE INTERIOR,
Washington, D. C.

SIR: Referring to our letter of July 8th, 1891, making application for a permit to cut timber from certain described [417] public lands in Missoula and

Deer Lodge counties, this state; we respectfully request permission to amend and modify our said application by eliminating therefrom the following lands described therein: viz., NW. $\frac{1}{4}$, Sec. 34, Tp. 14 N., R. 14 W., the same being covered by C. E. 4489 of Elijah F. Cunningham; All of Sec. 20, Tp. 15 N. R. 13 W., the same being covered by homestead entries of Jas. Burk, Ralph C. Davis, John T. Evans and Michael Delaney: All of Secs. 30 and 32, Tp. 15 N., R. 13 W., as we are advised that one C. E. Woodworth, who owns a small sawmill located on Sec. 32, desires to procure permission to cut timber from said sections for use of the settlers in that immediate vicinity, and we have no desire to interpose any obstacle which may interfere with his enterprise or in any way incommode the settlers and residents in that locality: W. $\frac{1}{2}$ SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 34, Tp. 14 N., R. 12 W., the same being covered by homestead entry of Hugh J. Wates: All of Secs. 20 and 30, Tp. 15 N., R. 11 W. (unsurveyed), being informed that A. J. Kleinen and William Ohnesorge, respectfully, claim to have settled thereon in good faith for the purpose of acquiring homes, and we have no desire to take any action which may interfere with or be detrimental to the interests of a *bona fide* settler.

We further request that action upon our application for permission to cut timber from the W. $\frac{1}{2}$, Sec. 8, and all of Sec. 6, Tp. 14 N. R. 14 W., and Sec. 30, Tp. 15 N., R. 14 W., be suspended pending consideration and action upon the application of Hiram S. Blanchard to cut timber therefrom, he claiming

to own a small saw mill in that vicinity. Although Mr. Blanchard did not publish notice of his intention to apply for such permit until over a month subsequent to the published [418] notice of our Company, we have no desire to throw any obstacles in his way, nor to object to the permit being applied for being granted him, should you deem it advisable and necessary in the interests of the public or settlers in the vicinity of said lands. Should, however, his application for permission to cut timber from said lands, or any portion thereof, be refused or rejected, we respectfully request that our application shall again apply and be taken up for action.

RECAPITULATION.

Lands to be eliminated from our application:

NW. $\frac{1}{4}$, Sec. 34, Tp. 14 N., R. 14 W., containing 400,000 ft.,

All of Sec. 20, Tp. 15 N., R. 13 W., containing 500,000 ft.,

All of Sec. 30, Tp. 15 N., R. 13 W., containing 300,000 ft.,

All of Sec. 32, Tp. 15 N., R. 13 W., containing 400,000 ft.,

W $\frac{1}{2}$, SW. $\frac{1}{4}$, SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ and SW. $\frac{1}{4}$, SE. $\frac{1}{4}$, Sec. 34, Tp. 14 N., R. 12 W., containing 200,000 ft.,

All of Sec. 20, Tp. 15 N., R. 11 W., containing 300,000 ft.,

All of Sec 30, Tp. 15 N., R. 11 W., containing 1,500,000 ft.

Lands upon which action upon application is to be suspended:

W. 1/2, Sec. 8, Tp. 14 N., R. 14 W., containing 500,000 ft.,

All of Sec. 6, Tp. 14 N., R 14 W., containing 1,000,000 ft.,

All of Sec. 30, Tp. 15 N., R. 14 W, containing 1,500,000 ft.

Making a total of eight sections containing 6,600,000 ft. of timber.

Very respectfully,
BLACKFOOT MILLING & MFG. CO.,
By THOMAS C. MARSHALL, V. P.

[Endorsed]: 19/397. 9352. General Land Office, 1891, Sep. 30, Receiver, 118397.

BLACKFOOT MILLING & MFG. CO.

Missoula, Mont., Sept. 23, 91.

Ask the elimination of tracts named from their application for [419] permission to cut and remove timber from public lands, etc.

Case 31/61. P. Jecko. Ack. 2. A. M. Sept. 28/91. E. M. Dawson. General Land Office, Division 1, Sep. 30, 1891.

Defendant thereupon offered and read in evidence permit to cut public timber, issued by the Secretary of the Interior to the Blackfoot Milling and Manufacturing Company, which said permit is in the words and figures following, to wit:

**[Exhibit—Permit to Cut Public Timber, Secretary
of the Interior to Blackfoot Milling & Manu-
facturing Co.]**

M. L. 244762-1.

PERMIT TO CUT PUBLIC TIMBER.

UNITED STATES OF AMERICA.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

WHEREAS, in conformity with the provisions of an act of Congress, approved March 3, 1891, entitled "An act to amend section eight of an act approved March third, eighteen hundred and ninety-one, entitled 'An act to repeal timber-culture laws and for other purposes,' " and rules and regulations promulgated by the Secretary of the Interior for the execution of said act, The Blackfoot Milling and Manufacturing Company of Missoula, Montana, has made application to cut and remove timber from a portion of the public lands, fully and specifically in said application described, for necessary agricultural and mining purposes and for manufacturing lumber for domestic uses,

AND WHEREAS, it is deemed necessary for the public interest that permission be granted unto the said The Blackfoot Milling and Manufacturing Company to cut timber on the lands hereinafter described;

THEREFORE, under and by virtue of the authority vested by law in the Secretary of the Interior, and [420] subject to all the conditions, restrictions, obligations, and limitations herein contained,

permission is hereby granted unto the said The Blackfoot Milling and Manufacturing Company to cut timber on the public lands for immediate use in the state of Montana, which said timber may be cut on public lands in the counties of Deer Lodge and Missoula in said state of Montana within limits particularly described as follows, to wit: The whole of Section Ten (10), Township Fifteen (15) North, Range Fourteen (14) West; the whole of Section Ten (10) and the East half and the Southwest quarter of Section thirty-four (34), Township Fourteen (14) North, Range Fourteen (14) West; the South half of Section Eight (8), the North half of the South West quarter of Section Eighteen (18), the West half and the South East quarter of Section Twenty-eight (28), and the whole of Section Thirty-four (34), Township Fourteen (14) North, Range Fifteen (15) West; the North West quarter of Section Six (6), Township Thirteen (13) North, Range Sixteen (16) West; the North half, the East half of the South East quarter, the South West quarter of the South East quarter and the South East quarter of the South West quarter of Section Twenty-four (24), the East half of Section Fourteen (14), the East half of Section Thirty-two (32), and the whole of Sections Twenty (20) and Twenty-two (22), Township Fourteen (14) North, Range Sixteen (16) West. And from the following unsurveyed public land, which when surveyed will be the whole of Sections Six (6) and Twenty-six (26), Township Thirteen (13) North, Range Fourteen (14) West; the whole of Sections Two (2) and Twelve (12), Township Thir-

teen (13) North, Range Fifteen (15) West; the whole of Section Two (2); the South half of Section Eight (8) and the North half of Section Ten (10), Township Thirteen (13) North, Range Seventeen (17) West; the whole of [421] Section Twenty-six (26), Township Fourteen (14) North, Range Seventeen (17) West; and the whole of Section Twelve (12) and the North half of Section Fourteen (14), Township Thirteen (13) North, Range Eighteen (18) West, as more specifically described by metes and bounds in its application, embracing in all eleven thousand two hundred and eighty (11,280) acres.

PROVIDED, HOWEVER, it is expressly stipulated and agreed that the permit hereby granted shall be, and the same is hereby, made subject to the following conditions, restrictions and limitations, to wit:

1. That this permit and all rights and privileges hereunder shall expire on the thirty-first day of January, 1893.
2. That no trees shall be cut or removed that are less than twelve inches in diameter, except such as may be absolutely necessary for making needed roadways through the timber.
3. That in the cutting of timber in the manner and for the purpose set out in the application of said The Blackfoot Milling and Manufacturing Company not to exceed fifty per cent of the timber of each class now growing thereon, and taken as nearly as may be from each acre of the tracts above described, shall be taken from the lands embraced in this permit.
4. That the said The Blackfoot Milling and Man-

ufacturing Company shall submit monthly, through the Register and Receiver at Missoula, Montana, a statement, under oath, showing the amount of each kind or kinds of timber cut or removed during each month, giving a description of the particular tract or tracts from which such timber was cut, and stating how such timber was disposed of and to whom.

5. That no timber cut or removed under this permit shall be so cut or removed for transportation out of the State of [422] Montana.

6. That in acting under this permit, no timber is to be cut or removed from any tract or tracts covered by the settlement or occupation of any *bona fide* settler, intending to perfect title to such tract or tracts under any of the laws of the United States, nor from any tract or tracts embraced in any reservation of whatsoever kind, created by operation of law or proclamation of the President.

7. That all of each tree cut that can be profitably utilized shall be used, and that the said The Blackfoot Milling and Manufacturing Company shall cut, remove, burn, or otherwise safely dispose of the tops and brush of trees, and the tails, slabs, saw-dust and other refuse from its sawmills, with a view to preventing the same remaining food for flames, and that the said The Blackfoot Milling and Manufacturing Company stands liable in damages for the starting or the spread of any fires attributable to its neglect or that of its employees in any manner to comply strictly with this provision.

8. That during the continuance of this permit the said The Blackfoot Milling and Manufacturing

(Testimony of W. H. Hammond.)

Company agrees not to purchase timber cut on public land of the United States of any person, or persons, not having a permit from this Department to cut timber from said public lands, except as provided in section 4 of the Circular of May 4, 1891, and it further agrees to ascertain affirmatively that persons offering timber for sale have the necessary permit to cut the same if taken from the public lands.

9. That nothing in this permit shall be construed to give to the said The Blackfoot Milling and Manufacturing Company the exclusive right to cut or remove timber from the [423] lands described herein, nor shall the granting of this permit in any way be held to withdraw the lands embraced herein from settlement or occupation and entry by any qualified *bona fide* claimant.

10. That the right is hereby reserved to modify or revoke at any time the permission hereby granted.

11. That the said The Blackfoot Milling and Manufacturing Company shall be subject to all the rules and regulations under the said act of March 3, 1891, as well as the conditions, restrictions, and limitations herein set forth and such additional rules and regulations as may hereafter be promulgated.

12. In consideration of the granting of this permit, it is expressly stipulated and agreed that the said The Blackfoot Milling and Manufacturing Company will use all available means to prevent forest fires, and should such fires be started, to endeavor to extinguish the same within the limits herein described.

13. That this permit is not transferable and any attempt to transfer the same will render it void.

THOS. H. CARTER,

Commissioner of the General Land Office.

APPROVED: January 16th, 1892.

JOHN W. NOBLE,

Secretary of the Interior.

[Endorsed]: U. S. Land Office, Missoula, Mont. Filed May 19th, 1892. Robert Fisher, Register. Received at the office June 5th, 1893. Robert Fisher, Register. 1890. 62027. [424]

Department of the Interior, General Land Office. Permit to Cut timber on Non-mineral Public Land. Granted to the Blackfoot Milling and Manufacturing Company of Missoula in the County of Missoula in the State of Montana. M. L. 244762-3. [425]

Defendant thereupon offered and read in evidence a letter dated May 14, 1892, on the letter-head of the Department of the Interior, Washington, D. C., which said letter is in the words and figures following, to wit:

[Exhibit—Letter, Dated May 14, 1892, Thomas H. Carter, Commissioner, to Register and Receiver.]

Register and Receiver, Missoula, Montana.

Gentlemen: I enclose herewith a letter addressed to you under date of March 12, 1892, which was referred to the Department for consideration and concurrence, and has just been returned to this office approved by the Hon. Secretary on the 10th inst.

In accordance with said letter, all of the rights and privileges conferred in the permit to cut public

timber granted to the Blackfoot Milling & Manufacturing Company, now attach to the Big Blackfoot Milling Company, as fully as though the permission was issued in its name; provided, the Big Blackfoot Milling Company endorse upon the receipt given by the Blackfoot Milling & Manufacturing Company for the permit issued in its name, its acceptance of the conditions, restrictions, etc., contained in the permit, and agree to strictly and faithfully comply with the same.

You will advise the Big Blackfoot Milling Company of the contents hereof, and upon its compliance with the requirements herein, will deliver to said company the permit granted to the Blackfoot Milling and Manufacturing Company returned herewith [426] for that purpose.

Very respectfully,

THOMAS H. CARTER,

Commissioner.

Defendant thereupon offered and read in evidence a receipt from the Blackfoot Milling and Manufacturing Company and the Big Blackfoot Milling Company, which said receipt is in the words and figures following, to wit:

[Receipt, Dated February 12, 1892, Blackfoot Milling & Manufacturing Co. et al. to Register.]

Missoula, Montana, Feby. 12, 1892.

Received from Robert Fisher, Register of the land office at Missoula, Montana, a permit to cut timber on certain described non-mineral public lands, issued and approved by the Honorable Secretary of the

(Testimony of W. H. Hammond.)

Interior, January 16, 1892, under and by virtue of the authority vested in him by Act of Congress approved March 3, 1891. (26 Stats., p. 1093).

Said permit is accepted upon the conditions, restrictions and limitations therein stated, which we hereby agree to and strictly and faithfully comply with in every particular.

THE BLACKFOOT MILLING & MANUFACTURING COMPANY,

By THOS. C. MARSHALL,
Vice-President.

BIG BLACKFOOT MILLING COMPANY,
By THOS. C. MARSHALL,
Attorney.

This May 20, 1892.

[Endorsed]: Filed February 12, 1892. Robert Fisher, Register. [427]

(Witness Continuing:) At the time cutting was done west of the Tuchenhausen claim, on section 18, it was done by the Big Blackfoot Milling Company; at the time it was done I did not know that the cutting was being done on the forty acres that makes what might be called the south half of the southwest quarter. I first learned that it had been cut over two years ago when I visited this land, which was subsequent to the bringing of this action. There is a difference in the appearance of land after the same has been cut under a permit to cut public timber and when the timber has been cut upon land owned by the company. Where cut under a permit, there is a lot

(Testimony of W. H. Hammond.)

Milling and Manufacturing Company, I owned teams and logging equipment. But on the sale of the mill and property to the Blackfoot Milling and Manufacturing Company I retained my teams and logging equipment; I also retained the logs that I had on the banks of the Blackfoot River. I had seventy-five or eighty teams with their equipment which I retained at the time of that transfer. No other person had any interest with me in the teams that I retained. I continued to operate those teams and logging equipment from that time forward there on the Blackfoot. Ultimately I went into the contracting business, and as I did, I sold my teams off gradually. When I gave a man a contract to procure logs for me, probably I would sell him some of my teams and equipment. I never sold any of these teams to the Blackfoot Milling and Manufacturing Company. I don't remember whether the Big Blackfoot Milling Company took over any of my teams or not; I had very few teams; I had gone out of logging and was letting contracts for logs. In the meantime, the teams that I had parted with had not to my knowledge been disposed of to either of those corporations. Most of those teams were sold to different individuals. When those teams were sold, the profit came to me; neither A. B. Hammond nor the Missoula Mercantile Company shared with me in those profits; the Blackfoot Milling and Manufacturing Company did not furnish me with any teams during the period of time that I was logging from the beginning of my operations on the Black-

(Testimony of W. H. Hammond.)

foot down to the time of the transfer to the Big Blackfoot Milling Company; the Blackfoot Milling and Manufacturing Company never engaged in logging on the Blackfoot River during [430] the time of its existence.

Cross-examination.

I was born in New Brunswick, Canada. I am a brother of the defendant, A. B. Hammond. I came to the State of Montana in 1881; my brother had preceded me there; he was already in business when I arrived. My first employment was the building of a wagon road for the Northern Pacific. I was employed by the Northern Pacific to build the road. Mr. Weeks, the division engineer of the Northern Pacific Railroad employed me. I don't think my brother, A. B. Hammond introduced me to Mr. Weeks. My first lumbering business in Montana was cutting ties and piling for the Northern Pacific. I did that work for E. L. Bonner & Company, which was the firm in which my brother, A. B. Hammond was interested. I continued this work for E. L. Bonner & Company for about two years. I had a contract with E. L. Bonner & Company and commenced work in the fall of 1881, and continued for two years. I did not work anywhere for quite a period of time—until the latter part of 1883. My next connection with the lumber business was working for a short period of time for the Montana Improvement Company; I commenced work for them along in the latter part of 1884. I had charge of operating some mills and cutting some logs for the

(Testimony of W. H. Hammond.)

up of some of their mills there. I was sort of a general factotum in that vicinity looking after the remnants of the old Montana Improvement Company's business. As to whether the two companies known as the Blackfoot Milling and Manufacturing Company and the Big Blackfoot Milling Company were identical, some of the same stockholders were in both companies; there was a change of name and a change of stock; there was no material difference in the identity of the corporations. The idea was to change the name and to change the character of the stock. The Blackfoot Milling and Manufacturing Company had just one kind of stock and the Big Blackfoot Milling Company had first and second preferred stock and common stock. I don't know whether it would have been feasible under the law to change the character of stock in the old company. I suppose the board of directors supervised the changing of the one company to the other and I guess I did. I was a member of the board of directors. I don't remember whether I was a member of the board of directors at that time. I think Mr. Bonner and Mr. A. B. Hammond were members of the Big Blackfoot Milling [433] Company immediately after it came into existence. Colonel Eddy was a stockholder in the Big Blackfoot Milling Company. I think Mr. A. B. Hammond continued as one of the directors of the Big Blackfoot Milling Company until the time he and his associates disposed of their stock to Mr. Daly. I believe Mr. Hammond was appointed sole trustee for all of the stock of the Big

(Testimony of W. H. Hammond.)

Blackfoot Milling Company to negotiate a transfer of his interest and the interest of his associates over to Mr. Daly. He did not altogether alone conduct the negotiations. I had something to do with that. Mr. A. B. Hammond and Mr. Hathaway had something to say about it. Mr. A. B. Hammond acted as trustee for the transfer of that stock. The flour mill we ran at Bonner belonged to the company and the merchandise store belonged to the company. I went up the Blackfoot River in 1883, but I went up there and established that headquarters camp for the purpose of carrying on logging operations in 1885. In 1883 I went on a hunting trip and general looking around over the country, a sort of scouting trip for my own individual purposes. I did not take a trip up the Blackfoot River country for the Montana Improvement Company for the purpose of looking over the situation and seeing whether or not there were logging propositions there; I never did. My first trip up there in regard to logging was in the fall of 1885 when the Fish Creek or Headquarters Camp was established. George L. Hammond, my brother, had charge of that camp, and he continued in charge of it during the time it was in existence; all the time. Jack Cunningham was foreman there under George Hammond. George Hammond was my agent there looking after timber on the Blackfoot and these foremen were under him at these different camps. From the time I first established the Headquarters [434] Camp in 1885 until we sold out there, I used to go up and down

(Testimony of W. H. Hammond.)

had anything to do with on the Edgar claim was in 1886. He resided there on the claim for two or three years after that. I was on the Tuchenhausen claim last summer. I don't know whether there was much difference in the character of the growth and the conditions of the old stumps between the old Tuchenhausen claim and the lands lying to the [436] west. A fire ran over the Tuchenhausen claim and I don't think it had run over the other. The Tuchenhausen claim was cut clean. I did not examine the stumps on the Tuchenhausen claim.

Redirect Examination.

The town of Bonner had a population of probably three hundred and fifty or four hundred when the property was sold out there. There are farms up the Blackfoot River to-day. The State of Montana owns this Edgar claim to-day.

Q. Have you made any inquiries as to what price the State is holding that land at?

Objected to by the plaintiff on the ground that it is immaterial.

Mr. WHEELER.—I wish to show that the State now holds that land as agricultural land and that it is held to-day at \$10.00 per acre.

Objection sustained by the Court; to which ruling of the Court, defendant duly excepted.

Defendant's Exception No. 10.

(Witness Continuing:) I have had some experience in farming. I have had some experience in farming in parts of Montana. I am a fair judge of

(Testimony of W. H. Hammond.)

farming land. As to the quality of the land upon this Edgar claim regarding its fitness for a farm, I should judge it was good, fair farming land. I have seen a good many farms on a great deal worse land than what that is—a great many. I was born in New Brunswick, right on the United States line. The St. John's River was the line. My father's brother lived right across the river in the State of Maine. I first came to the United States, to make it my [437] home in 1867. I declared my intention to become a citizen of the United States in the Territory of Washington, Puget Sound, in 1878. Before I went to Montana in 1881, I had been in business in the Territory of Washington, Puget Sound. I was in the logging and teaming business. I had had experience in the logging and teaming business. I worked in the woods when I was fifteen or sixteen years old. When I was conducting business in the Territory of Washington, Mr. A. B. Hammond, my brother, had nothing whatever to do with it. I had no interest in common with my brother at any time prior to my arrival in Montana. I was operating on my own account, while I was engaged in the logging business in the Territory of Washington. I had not owned any sawmill. I would cut logs and sell them to whoever wanted to buy them. While logging in Washington, I purchased merchandise at stores.

Q. State what the custom was of extending credit and paying orders.

Mr. HALL.—To which the plaintiff objects on the

(Testimony of W. H. Hammond.)

ground that it is irrelevant, incompetent and immaterial as to any custom that existed in some other State at a time prior to the time in question.

Mr. WHEELER.—I think, your Honor, where circumstances are relied upon to point to something wrong, that we are entitled to show that what was done in the matter of these credits in Montana was exactly the way that business was conducted elsewhere by mercantile concerns, with which it is not possible that A. B. Hammond or any of the firm of Eddy-Hammond and Company or the Missoula Mercantile Company had any connection whatever. I want to show that he got credit from strangers before he went to Montana. The implication here [438] is that this man could not have done any business unless he had been given credit by his brother, A. B. Hammond. We wish to show that he transacted business with strangers in just that same way.

Objection sustained by the court; to which ruling defendant duly excepted.

Defendant's Exception No. 11.

Q. Mr. Hammond, state whether or not while engaged in the logging business in the state of Washington, you obtained credit from any mercantile concern.

The COURT.—I have ruled on that and it is not necessary for you to multiply questions in order to save a ruling on any particular matter. You have your exception, and that answers every purpose.

Mr. WHEELER.—I am asking him if he obtained

(Testimony of W. H. Hammond.)

credit. That is a little different question. I have the same ruling and exception here.

Defendant's Exception No. 12.

Q. State whether or not while in business in Washington it was your custom to give orders upon any mercantile house in payment of your men.

To which question plaintiff objected on the ground that it is irrelevant, incompetent and immaterial as to any custom that existed in some other state at a time prior to the time in question.

The objection was sustained by the Court; to which ruling defendant duly excepted.

Defendant's Exception No. 13.

(Witness Continuing:) From my experience in the woods and logging matters, regarding the possibility of telling by examining a stump whether same had been cut five years or longer, by the appearance [439] of the stump, you might tell five years, but I do not think that after ten years you could tell whether a stump was cut ten years ago or fifteen years ago—not with any definiteness. I know there was cutting along the Blackfoot River on lands involved in this suit for railroad timber and for ties prior to 1885. There was a man by the name of Sloan who had a contract for ties and piling in 1882 and he cut from the Bonner mill up as far as Montour Creek. That was all along the river, ties and piling were cut down to the Clearwater River. He cut a lot of ties out of that Longley Flat, as you call it, and he cut a lot of ties on both sides of the river on section 26, township 14 north, range 16 west.

(Testimony of W. H. Hammond.)

When the transfer took place from the Blackfoot Milling and Manufacturing Company to the Big Blackfoot Milling Company, most of the old stockholders took stock. I believe there were some new men that came in at that time. With regard to the stockholders before and after the transfer, as far as I know, they were as follows: E. L. Bonner, R. A. Eddy, A. B. Hammond, George Hammond, C. H. McLeod, John M. Keith, Thomas Marshall, a man by the name of Dawes and I think Haycock had some stock. The Blackfoot Milling and Manufacturing Company was not the same thing as the Eddy-Hammond & Company in corporate form. I don't think Mr. Thomas Marshall, the attorney, had a large interest. I could not say how much he had. Mr. John M. Keith had thirty, forty or fifty shares of the first stock. When we sold out I received something over two hundred and fifty thousand dollars, as near as I can remember, for my shares. Mr. A. B. Hammond had no interest in, nor did he receive, a part or portion of the \$250,000, or thereabouts, that I received for my interest. I was residing in California when this suit was brought. [440] I have been making my home here in California since 1899. I do not know how much Mr. Eddy received in that same transaction. My recollection is that Mr. Eddy owned first preferred stock. He resides in Europe most of the time, I guess; he resides in San Francisco, that is, makes his home in San Francisco, but I guess he is away most of the time in Europe, a great deal of his time. Mr. Eddy

(Testimony of W. H. Hammond.)

is a man of large means. The lumber that I cut at this mill was bought by the Anaconda Mining Company in Montana. In the early operations most of it went to the Anaconda Mining Company. Mr. Daly, of the Anaconda Mining Company, furnished me with capital for the operation of my mill; at various times \$50,000. A man by the name of Walker loaned me money—I think I had a loan of \$50,000, from him. Prior to the incorporation of the Big Blackfoot Milling Company, all of the lumber that was cut by me or under my directions was used in the mines at Butte and the smelters.

The COURT.—He said that yesterday. He said that his lumber was sold largely, if not entirely, to people in Missoula and that some of it also went to the Anaconda Mining Company.

Mr. WHEELER.—I think he said “largely,” your Honor. My purpose is to show that all of the lumber he manufactured was used in the State of Montana. A special statute gives us that defense.

(Witness Continuing:) As to the purposes for which the lumber manufactured at Bonner was used; it was used in the mines as timber, planking and logging, and building material for building smelters, etc. We cut fences for agricultural use and flooring [441] of all kinds and material that was used for the construction of houses.

Q. State whether or not, so far as you know, the entire lumber manufactured at Bonner was used in the State of Montana for one of the following purposes: Mining, agriculture, manufacturing or timber purposes.

(Testimony of W. H. Hammond.)

A. The main part of our lumber that was manufactured there was used for that purpose.

Q. Do you know of any that was used for other purposes?

A. We sold some lumber to the railroad company.

(Witness Continuing:) The lumber that was sold to the railroad company was used for ties and bridges; and for all these purposes the lumber manufactured was used in Montana. It is not possible to tell what became of the lumber that was manufactured from logs cut off any particular place, such as off section 18, which we have called the Boyd trespass, or off the Edgar claim; they were put in the river and went down with the other logs and were sawed in the mill and shipped. I could not tell where each and every log went to, its final destination. I testified on my cross-examination that I was still employed by the Montana Improvement Company after I bought out its holdings at Bonner. I was employed to look after their mill at Wallace. Wallace and Bonner are not the same place. I never worked for the Montana Improvement Company at Bonner at any time and I did nothing for the Montana Improvement Company at Bonner after I made the purchase of the Bonner property evidenced by the deed here in evidence reciting a consideration of \$300.00. I continued in the employ of the Montana Improvement Company in [442] the fall of 1885 and a little while the first part of the winter of 1886. About that time I was living with my sister at Wallace, then I went to Bonner and resided there from

(Testimony of W. H. Hammond.)

that time forward until we sold out in 1898. I continued to stay there until the beginning of 1899. [443]

Defendant thereupon offered in evidence a certified copy of part of the duplicate assessment book of the County of Missoula for the year 1886, setting forth assessment of W. H. Hammond, Missoula, for said year, from which said copy of said part of said duplicate assessment book it appeared that W. H. Hammond was assessed in the sum of \$2,000.00 for merchandise; that the amount of his capital was \$12,000.00; his horses \$600.00; 3 wagons \$100.00; and a sawmill \$10,000.00. Total assessment, \$24,720. The document was marked Defendant's Exhibit "D."

Defendant thereupon offered in evidence a certified copy of part of the duplicate assessment book of the County of Missoula for the year 1887, setting forth assessment of W. H. Hammond for said year, from which it appeared that the value of stock was \$2,500.00; the amount of capital \$22,000.00; 16 horses \$1,600.00; 4 mules \$400.00; 14 oxen \$500.00; 5 wagons \$500.00; watches, clocks, etc., \$175.00; sawmill \$8,000.00; lumber \$3,500.00; all other property \$400.00, total \$28,975.00. The said document was marked Defendant's Exhibit "E."

Defendant thereupon offered in evidence a certified copy of part of the duplicate assessment book of the County of Missoula for the year 1888, setting forth assessment of W. H. Hammond for said year; that it appeared from said part of said copy of said dupli-

(Testimony of W. H. Hammond.)

cate assessment book that the northeast quarter, the southeast quarter of section 21; the northwest quarter and the northeast quarter of section 22, all in township 13 north, range 18 west, embracing 520 acres, was assessed at \$1,560.00; that the value of merchandise was \$12,000.00; the amount of capital \$50,000.00; 16 horses, \$1,600.00; 4 mules or asses \$400.00; 10 oxen and steers, over two years old, \$500.00; all other property \$120.00, total assessment, \$66,430.00. Said document was marked Defendant's Exhibit "F." [444]

(Witness Continuing:) My mill was located on the northeast quarter of section 22, township 13 north, range 18 west.

Thereupon counsel for defendant exhibited to the witness Plaintiff's Exhibit No. 8, purporting to be certified copy of part of duplicate assessment-roll for the County of Missoula for the year 1894, setting forth the assessment of the Missoula Mercantile Company.

(Witness Continuing:) I had a house in the city of Missoula, Montana, in the years 1894 and 1895. I owned a small house that was close to the residence in which my mother lived and which appears assessed to Missoula Mercantile Company in said Plaintiff's Exhibit No. 8 as "W. H. Hammond residence \$2,500.00." Referring to Plaintiff's Exhibit No. 8, the item "W. H. Hammond Levasseur house, \$400.00," is the small house that I bought from a man who formerly lived there. I do not know how the W. H. Hammond residence and the W. H. Hammond small

(Testimony of W. H. Hammond.)

house came to be assessed to the Missoula Mercantile Company for the year 1894. Missoula Mercantile Company had no interest or title to that house or to the small house alongside of it. I did not dispose of my residence and the small house until 1897 or 1898. I do not remember how much I sold it for. I think \$10,000.00 is what I got for the property. The post office was not established at Bonner until 1888, so my residence is given in these assessments for the year 1886, 1887 and 1888 as Missoula. The Missoula Mercantile Company did not have any interest in the proceeds that I received from the sale of these houses. They belonged to me. Mr. A. B. Hammond had no interest in them. [445]

Thereupon counsel for defendant exhibited to the witness Plaintiff's Exhibit No. 11, purporting to be certified copy of part of the duplicate assessment-book for the year 1895, setting forth the assessment of Missoula Mercantile Company and directing the witness' attention to the following items thereon: "Eddy residence \$2500.00; W. H. Hammond residence \$2500.00; W. H. Hammond Lavasseur house \$400.00."

(Witness Continuing:) The house called the Lavasseur house was the one I just spoke of—the little house alongside my residence. It was called the Lavasseur house, because I bought it from a man by the name of Lavasseur. I do not know how it is that my residence and the Lavasseur house came to be assessed to the Missoula Mercantile Company in the year 1895 or listed among the properties of that Com-

(Testimony of W. H. Hammond.)

pany. I know that I told Mr. Moser to take care of my taxes. I suppose that he, for his own convenience, listed the property that way. I never authorized or directed him to have my residence at Missoula listed under the head of the property belonging to the Missoula Mercantile Company. I did not have any knowledge that it was done that way prior to this time. I personally had nothing to do with directing the method of listing the property of Blackfoot Milling & Manufacturing Company or Big Blackfoot Milling Company. Mr. Moser was directed to take care of the assessments on those properties. I never had anything to do with the assessment of the Blackfoot Milling & Manufacturing Company. Mr. Moser took care of the taxes with regard to the Big Blackfoot Milling Company. Mr. Moser was secretary at one time of the Big Blackfoot Milling Company. I am not positive whether he bore any relation to the Blackfoot [446] Milling & Manufacturing Company, but I think he did. Mr. Moser was secretary of the Missoula Mercantile Company at one time. [447]

Recross-examination.

I think Moser was secretary of the Missoula Mercantile Company and the Big Blackfoot Milling Company at the same time and took care of these matters, and I expect he took care of the tax matters for the Big Blackfoot Milling Company under the directions of the board of directors of that corporation.

The witness was here asked questions concerning the personnel of the stockholders composing the

(Testimony of W. H. Hammond.)

Blackfoot Milling and Manufacturing Company and the personnel of the stockholders composing the Big Blackfoot Milling Company, and thereupon the following proceedings were had.

Mr. WHEELER.—The new corporation was substantially the old corporation under a new name, with different classes of stock and there may have been a difference, and undoubtedly there were different organizers and a few shares differently placed, but substantially it was a continuation of the old corporation. We make no point about that at all.

Mr. HALL.—You have made a statement here in the record.

Mr. WHEELER.—And I desire to stand upon it. That is exactly what I said before. I admit that it was simply a change in form for the purpose of issuing a different class of stock and that the Big Blackfoot Milling Company took over all of the property of the Blackfoot Milling and Manufacturing Company. That has been our position from the beginning.

A document in the form of an affidavit is here handed to the witness, who admits that the signature William H. Hammond appended thereto, is his signature, and that he swore to same before Gust. Moser, a notary public, on the 8th day of April, 1892. [448]

(Witness Continuing:) I believe that affidavit was true at that time.

Thereupon plaintiff offered and read in evidence the said affidavit, stating that said affidavit was filed with the Secretary of the Interior when they desired

to have the permit to cut timber, under which the defendant justifies certain cutting on section 18, township 14 north, range 15 west, transferred from the Blackfoot Milling and Manufacturing Company to the Big Blackfoot Milling Company. The said affidavit is in the words and figures following:

[Exhibit—Affidavit of Wm. H. Hammond Re Permit to Cut Timber, etc.]

DEPARTMENT OF THE INTERIOR,
UNITED STATES OF AMERICA, STATE OF
MONTANA, COUNTY OF MISSOULA.

In the matter of the application for transfer of permit to cut timber on public lands heretofore granted to the Blackfoot Milling & Manufacturing Company.

William H. Hammond, being first duly sworn, on his oath deposes and says that he is the president and general manager of the Big Blackfoot Milling Company, and was a stockholder and director of the Blackfoot Milling & Manufacturing Company; that the Big Blackfoot Milling Company is the direct successor of the Blackfoot Milling & Manufacturing Company. That on a reorganization of the Blackfoot Milling & Manufacturing Company for the purpose of making first and second preferred and common stock and to secure other advantages, the name of the Big Blackfoot Milling Company was adopted in lieu of the former name, Blackfoot Milling & Manufacturing Company, but so far as the personnel of said companies are concerned, they are identical.

That on the reorganizing of the Big Blackfoot Milling Company it succeeded to all of the rights, privileges, franchises, property, business, goodwill, &c. of the Blackfoot Milling & Manufacturing Company, and that all operations heretofore done and carried on in the name of the Blackfoot Milling & Manufacturing Company are now done and carried on and conducted in the name of the Big Blackfoot Milling Company.

WHEREFORE, affiant asks that the said permit so granted as aforesaid, to the Blackfoot Milling & Manufacturing Company be reissued to the Blackfoot Milling Company and as in duty bound will ever pray.

(Signed) WILLIAM H. HAMMOND.

Subscribed and sworn to before me this 8th day of April, 1892.

GUST. MOSER,

Notary, Missoula County, Montana.

Notarial seal attached. [450]

**[Testimony of Chancy E. Woodworth, for
Defendant.]**

CHANCY E. WOODWORTH, a witness called, sworn and examined on behalf of the defendant, testified as follows:

Direct Examination.

I reside at Missoula, Montana, and am a civil engineer. I was a civil engineer from and including 1885 to and including 1895. I went to the Big Blackfoot Canyon in 1888 as a general timber in-

(Testimony of Chaney E. Woodworth.)

spector of the Northern Pacific Railroad Company. I was employed in this capacity for the Northern Pacific Railroad Company about ten years. While in this capacity I had occasion to run lines and ascertain the section corners in the Blackfoot country. I know the claim or quarter section in the Blackfoot country known as the Cunningham claim—that is the northwest quarter of section 34, township 14 north, range 14 west. I was first on that section—on the line between that and section 33—14—14 in the spring of 1888. I know where the corner is that is common to sections 34, 33, 27 and 28, all in this township. I went to that corner in 1888 and ran a line from that corner south between said sections 33 and 34—that was the line between sections 33 and 34. I observed at that time the condition of the land immediately to the east and west of that line. They were cutting on section 33 at that time and no work had been done on section 34. There was no evidence at that time of the cutting of timber upon the Cunningham claim. I participated in the work of scaling timber on section 33—14—14. I know the Kelly claim; that is the northwest quarter of section 18, township 13 north, range 14 west. I was first upon that claim about 1890 or 1891. It was in 1890 that I was there first. Afterwards, I was there in 1891. In 1890 I was on that claim and the next section to it. That was section 13, [451] township 13 north, range 15 west, lying directly west of the Kelly claim. I ran a line at that time between said section 13 and said section 18. I was running the

(Testimony of Chaney E. Woodworth.)

lines for the purpose of scaling. I had an assistant doing the scaling and I was running the lines for him. At that time I observed the condition of the land to the east and west of the lines which I ran, that is, the dividing line between sections 13 and 18. I ran the line as far as they had cut on section 13 at that time; I should judge it was pretty close to the south line, perhaps three-quarters of a mile. I began to run from the northeast quarter. The railroad section was cut, but the land which was later known as the Kelly claim was uncut. I am referring to the time when I was there in 1891. When I was there in 1890 I ran this same line for my assistant. In 1891 I was checking it up to see whether the timber was cut clean or not.

Cross-examination.

I have been on the Kelly claim several times since 1891; perhaps not right on the Kelly claim. I have not been on it to inspect it. I have never been there since 1891—not on that line—to inspect it to see whether or not the timber was cut. I don't know anything about when the timber was cut. I did not scale it. I don't know what year it was cut in. When I was running those lines I was running them for my assistant and to find out where the lines were for my own knowledge. I wanted to know where the line was between sections 13 and 18 because I had general charge of the Northern Pacific timber in that valley. I was not engaged in Government work nor interested in Government lines. [452]

Q. It was not a part of your duty to inspect Gov-

(Testimony of Chancy E. Woodworth.)

ernment lands to see whether or not the timber had been cut off of them?

A. It was part of my duty to see that we did not take any logs off of Government lands.

(Witness Continuing:) I was there to see whether the timber had been cut off of the railroad lands or not. I have had in mind the time I went down there in 1890 to inspect the Kelly claim. I did not see Mr. Kelly on that claim or see anybody there. I don't think I ever saw anybody living on that claim; it has not been inhabited, that I know of; I could not say when I was there in 1891. I know pretty well when I was there in 1890; that was late in the fall. If I made any notes of my visit there, they are destroyed by this time. I am testifying, not from any notes, but just from my recollection of twenty-five years ago. As to the extent of going over the Kelly claim, I went to the line between the two sections. I did not go over any in the interior of the Kelly claim. There was no timber cut off of it in 1890. I know this, for if we see roads or anything of that kind, it is our duty to see that no timber from any of the even sections gets mixed up with the timber from the odd sections. I did not have to go back into the interior of any of these even-numbered sections to see whether or not timber had been cut on them. All I was engaged in doing was to find out that they were not cutting over the line and to see that they were cutting as close to the line as possible, so that the railroad company would get all of the timber that it had claim to. We tried to cut

(Testimony of Chancy E. Woodworth.)

right up to the line. That was my business. I did not pay any attention to [453] the interior of the even-numbered sections. I don't know what may have been cut on the interior of the Kelly claim in 1890 or 1891. When I was surveying the line between sections 33 and 34, township 14 north, range 14 west, I was out on the same mission. I was surveying out that line in 1888—the first year I was in the valley I did not run the north line of section 34. I was only concerned with section 33. My business and object was to pursue the same line of work as regards the line between 33 and 34 as it was between section 18–13–14 and the adjoining section 13–13–15. I know nothing more about the interior of the Cunningham claim in 1888 than I did about the Kelly claim in 1890; probably I only spent a fraction of one day on this line between the Cunningham claim in section 34 and section 36. I don't think I ran for other section lines that day. I cannot tell how many I ran the day before, but I ran a line on section 29. Section 29 had been cut before—I suppose by the Hammond people. I was looking after the odd sections. It is difficult for me to say how many sections altogether I ran in the winter of 1888, but I have every reason for saying that I ran out hundreds of section lines. All I can remember particularly is the condition of the land and timber between the Kelly claim and section 33. As to whether I remember the condition of all the other even-numbered sections that adjoin the odd sections that I ran out the lines on, many of these lines were in the

(Testimony of Chaney E. Woodworth.)

prairie. I was looking for timber. Of course, there is no timber on the prairie, but very often we have to run those lines from there in order to tie in to our lines in the timber. We ran out the line between sections 5 and 8, in township 13 north, range 14 west, in 1888. [454]

Redirect Examination.

I was actively engaged for about six years in this business of running lines for the scalers on railway lands. I knew that railroad lands were being cut over because it was my business to know. I was there for the purpose of taking care of the Northern Pacific timber in the State of Montana. It was part of my business to know just where the company was cutting and I made it my business to know where the company was cutting for five or six years. If there had been any cutting done on the Kelly claim prior to the time of my inspection, I would have known it. On the Cunningham claim, I don't even remember of running out the lines between sections 27 and 34, in township 14 north, range 14 west. Concerning the topography of the Cunningham claim with reference to section 28, upon which it cornered—section 34 is situated high up on the hill with a slope to the north and in the northwest corner there is a basin and from there down to the Edgar claim there is a drop that goes off for perhaps 20 rods, then there is a bench and then it drops down hill to the Edgar claim. From the line that I ran between sections 33 and 34, I would see the Cunningham claim as far as I could see into the timber. There

(Testimony of Chaney E. Woodworth.)

was a basin there and I could probably see a quarter of a mile into it. So far as I could see from the line that I ran, no timber had been cut there. With regard to the Kelly claim, having reference to the topography of that country, I could see an eighth or a quarter of a mile. If there had been any timber cut on the Kelly claim, or the lands immediately surrounding it, I think it would have been possible for me to know it. [455]

Recross-examination.

My occupation for the past year has been attempting to run a ranch and I have been employed by Mr. Hammond in connection with this case, looking up the evidence, taking the witnesses out over the land and coaching them. Showed them where the lines and corners were. Out of all the hundreds of sections that I have surveyed and scaled up there, I remember absolutely the condition of the timber on the Cunningham claim in 1888 and the condition of the timber on the Kelly claim in 1890. I testified to that from my memory. It was not a part of my business, and I was not paying any attention to the timber that may have been cut on any of the even-numbered sections. I could not say positively how much was cut or whether any was cut on the interior of either one of those claims. [456]

[Deposition of Patrick Hayes, for Defendant.]

The deposition of PATRICK HAYES, a witness called and sworn on behalf of the defendant, was offered and read in evidence by the defendant, as follows:

(Deposition of Patrick Hayes.)

Direct Examination.

I reside at Potomac, Missoula County, Montana. I am fifty-eight years old. By occupation I am a farmer. I raise hay, oats, cattle, horses and own a thousand acres in that vicinity. I also am a notary public and a member of the Board of Trustees of the Missoula County High School. I first came to the Blackfoot Valley in 1886. When I first arrived in the valley, I worked awhile in the timber, logging; and then bought out a man here, the claim I now have and where my farm now is. After I settled on that place, I went to work for W. H. Hammond, the latter part of August, '87, I guess. I took charge of some logging operations over on the Blackfoot River, section 29, township 14 north, range 16 west. My camp was located about the east line of the section, between 28 and 29, township 14 north, range 16 west. I had charge of the work. We cut logs and banked them and hauled them to the river. I was familiar with the land of section 29, and with section 28, which adjoins section 29 on the east. All the logging timber was then standing on said section 28; there may have been a few trees cut there but nothing to speak of. There might be some ties, or something cut, or something like that, but there was no logging done on section 28 at that time. There had been no go-deviling done on that section at that time. There was a trail ran through that section known as the Pend O'Reille; it ran north of the quarter stake between sections 28 and 29 on the north or west side of the river. We always called it

(Deposition of Patrick Hayes.)

the north side. When you are on the left-hand side going up, we call it the north side. [457] and the other side is the south side. I traveled over that trail every year since. I remained familiar with that section 28 every year since, sometimes I passed through it five or six times a year during the summer season. Two or three years after I was there the timber was cut. I don't just remember the date. It was cut by William Longley and at that time he was living there on the ground, on the northwest quarter of that section. Mr. Longley cut on the north or west side of the river in the northwest quarter of section 28. After Longley settled on the northwest quarter of section 28 the name given locally to part of that claim and the country below it further down the river was the Longley Flat. The Longley Flat extended down the river from the northwest quarter of section 28. It took in principally all of section 29. I recall after Mr. Longley settled on this claim a fire running through a part of his timber or in that vicinity. I believe in '89 it was a very dry summer. I think these old cuttings on 29 was burned at that time and the fire extended over to 28, of course. I am acquainted with section 26, township 14 north, range 16 west. I have been traveling through there after stock and I owned part of it at one time—twenty acres in this section. I knew of a logging camp that was located on that section by McNamara. I believe it was in '88 that McNamara had his camp there. At that time, in 1888, when I was familiar with said section 26 the

(Deposition of Patrick Hayes.)

timber was standing on it; there was no logging being done; there might be a few trees cut here and there, but there was no logging outfit on it. I know of logging operations being conducted on that section by Pat Dunnigan. I am sure it was in '95. The timber remained standing in said section 26 [458] until it was cut by Pat Dunnigan in 1895. I want to be understood that there might be a few trees, ties, or something cut but there was no logging done. I don't think there had been any go-deviling done.

Cross-examination.

By go-deviling, I mean that is when they are close to the river they put these logs on the travois, something like that, and haul it into the river—some kind of little sled. I was born in New Mills, New Brunswick County. I did not know Mr. A. B. Hammond there, but I knew Henry Hammond. I knew him on Puget Sound. Immediately after I came to Montana I commenced to work for Henry Hammond. I came here probably for the purpose of working for Henry Hammond; I was writing and came up here. Anyway, I went to work for him down about Thompson in 1882. I came here in 1882 and I worked for Henry Hammond from then until the first of April, '83. I started again working for Henry Hammond in 1886. The last work I did for Henry Hammond was when I worked on that section 29, township 14 north, range 16 west, in 1887 and 1888, I think the last work was in 1888. My business relations and dealings continued with the Hammond people for

(Deposition of Patrick Hayes.)

quite a number of years after that. I could not say the Hammonds and I were very friendly. I was intimate with them. Sometimes we used to quarrel like the deuce. Off and on I had business relations with the Hammonds all these years. I could not say I am very friendly with Henry Hammond, but I kind of like the man, that is all there is to it. I first got acquainted with A. B. Hammond when I was working below Missoula. I never worked for A. B. Hammond when up in the Blackfoot country.

Q. He never was up there? [459]

A. He passed by there once; I remember one time he passed by.

(Witness Continuing:) I was on the ranch, he stopped there and had his dinner. When I was working up there A. B. Hammond was never working around there; he had nothing to do with it. It was all Henry Hammond. All I knew of the operations on the Big Blackfoot was Henry Hammond. He was the head push of them all; directed all operations and cutting up there. I was working for wages for the Hammonds. The only place I did cutting in township 14 north, range 16 west, was in that one section 29. Possibly I might have done a little in 19. I never cut any my self on section 28. The first cutting I did on section 29 was in '87. We had a camp down there about on the line right close to the edge of the Longley claim. It was two or three years after '87 that the timber was cut off the Longley claim; I would not be positive whether it was two or three. The logs that Longley cut on the

(Deposition of Patrick Hayes.)

Longley Flat were banked on the river and went to Bonner. There wasn't any other mill they could go to. I was about section 28 when there was a camp on the east side of the river. A man by the name of Michels cut that. I think it was along in 1894 or '95. It was some years before that that a bridge was put across there. Kilburn had a camp there at the time the bridge was put across. It was across the river on the east or south side of the river; that was in '90, I guess, or '91. Afterwards Michels built a camp there. A bridge was built every year anybody was over there. There was no logging on the Longley Flat before 1890. I was there in '87 and '88. It was in '90 or '91 that there was logging done there. [460] I am not positive about those dates. It was a long time ago and I have nothing in particular to refresh my memory in regard to that. I do not want to fix the date when the timber was cut off of that flat by Longley, but I know Longley was there in 1890, and there was no timber cut there before Longley settled on that, except there might have been a few ties or something like that; no logging done; no logs put into the river. I am absolutely positive of that. I was paid for my cutting on section 29 by getting a check for it or I got credit for it; I guess I was in debt to them for supplies I got on the ranch. I was in debt to W. H. Hammond. I guess I got credit for the work I did on my account. My account was with W. H. Hammond. I got some supplies from him and some from the Missoula Mercantile Company, but when I set-

tled up for my work on section 29, it was applied only on my account with W. H. Hammond.

[Deposition of Henry W. Martin, for Defendant.]

The deposition of HENRY W. MARTIN, a witness called and sworn on behalf of the defendant, was offered and read in evidence by the defendant, as follows:

Direct Examination.

I reside at Sunset, Powell County; that is in section 6, township 13 north, range 14 west. I was familiar with the claim there known as the Elijah Cunningham claim. It is the northwest quarter of section 34, township 14 north, range 14 west. I first became acquainted with that claim in 1889. We were running a sawmill there, old man Morris and I, and we had occasion to get water from the Big Fish Creek and to bring this water from Big Fish Creek. We cleaned out an old water ditch on this quarter. This was the first time I was on that ground; that was probably in the middle of summer, May or June. I was on that claim several times after that. I [461] was on it after Elijah Cunningham took it up. The first time I met Elijah Cunningham to get personally acquainted with him, was when he came to my place looking for work at the sawmill; that same summer he went to work for me. That was the summer of '89. I had occasion to visit that claim of Mr Cunningham's.

Q. When Mr. Cunningham settled on that claim, can you state whether or not any of the timber had been cut therefrom?

A. Of course, I did not run right to the edge of

(Deposition of Henry W. Martin.)

the line to see if any of it was cut; the timber was all standing; the first connection I had there, he was working at the sawmill; he wanted me to go over and take up a claim adjoining it; we went over and looked the section over pretty thoroughly.

(Witness Continuing:) Part of the timber on that Elijah Cunningham claim was cut by Mr. Kilburn the same year he cut the Sontag claim. Kilburn must have cut about half of it and the balance of that claim was cut the next year when Mr. Boyd was cutting the Silvey claim. Prior to the time of Mr. William Boyd and Mr. Ernest Kilburn cutting the timber on the Elijah Cunningham claim, there was no evidence of any timber around there being cut.

Cross-examination.

The Cunningham claim corners on the Edgar claim and there is quite a slope up from the Edgar claim to the Cunningham claim. It slopes to the south and west. As to whether I am absolutely sure whether there was no timber cut off of the Cunningham claim prior to 1892, we traveled over the section with the intention of taking up a claim and we found none cut. [462] We started at the cabin almost to the quarter corner on the north side of the claim and we passed mighty close to the east corner. The cabin was right close to the west line and right below a little ditch. The cabin was right in the timber. The timber was lying right due east. In reference to the Edgar house, the cabin was just up from the little house—the Edgar house was down on the flat. This

(Deposition of Henry W. Martin.)

Cunningham house was up in the gulch. I cannot be much mistaken about the year when this was cut. Cunningham was showing me the timber I could take up on the east of his claim. When I went with him on his claim, I am sure we did not go through any timber that was cut. There was some timber cut right alongside of us, west of us, and there was a little timber cut north of us. There could not have been any other timber cut and I not have seen it. We went all over the claim; we walked in there for three or four hours. I did not notice any indication of any scattering trees taken out of there. There was no evidence of timber being cut.

[Deposition of E. R. Kilburn, for Defendant.]

The deposition of E. R. KILBURN, a witness called and sworn on behalf of the defendant, was offered and read in evidence by the defendant, as follows:

Direct Examination.

My full name is Ernest Robert Kilburn. I reside at Ovando, in the Big Blackfoot Valley, Montana. I am engaged in general merchandising. I am familiar with the tract known as the Henry F. Edgar claim; that is the southeast quarter of section 28, township 14 north, range 14 west. I became familiar with that claim in 1885. I worked on that claim in the late fall of 1885 and the early winter of 1886. I scaled logs on that claim. Henry Edgar cut the logs on that [463] claim at that time. I scaled between five and six hundred thousand feet of logs on the claim cut by Henry Edgar at that time. Part

(Deposition of E. R. Kilburn.)

of those logs were hauled to the Blackfoot River by Mr. Edgar—that was the winter of '86. He hauled until the snow melted and the sleighing broke up and then he had to quit. The balance of that five hundred thousand feet of logs cut by Mr. Edgar which were not taken to the river by Mr. Edgar, were hauled on trucks to the river the latter part of April, 1886. I drove a team, helping haul them. After this five to six hundred thousand feet of timber had been cut by Mr. Edgar, the remaining timber on the claim was cut in the late summer and early fall of 1886. I did not participate in the cutting of that timber. I scaled some of it that fall. There was a fire broke out in the cuttings in the Edgar claim either the latter part of August or the first of September, 1886. I was over on the Hammond ranch looking after making some hay and they sent down and took what men I had to help fight the fire; Mr. Edgar was also making hay on the Israel Clem ranch, which is now owned by Henry Martin, and they came after him also; he had a couple of men working for him and he took them and he was gone two days helping fight the fire there on his place. Cunningham worked a little while at the old headquarters camp at Fish Creek when he first came out from Minnesota, I should say probably two or three weeks before they sent him down to the foot of Nine Mile Prairie to take charge of a logging camp there. I am not positive that Cunningham—I am not positive just where he worked, but I do know that Bob Moore, foreman of the Fish Creek Camp, was cutting and

(Deposition of E. R. Kilburn.)

skidding logs on the Edgar claim at that time. I also know positively that they were [464] not in the habit of letting anybody lay around when there was work to be done, and while Cunningham was there he must have been working on that claim, the Edgar claim. Mr. Edgar was there on the Edgar claim when I was working there in the spring of '86. In the summer of '86 on that claim there was in the neighborhood of two or three acres in cultivation. Edgar cleared the stumps and the small brush off the ground and he plowed and planted it to potatoes and other vegetables. I have had experience farming in Montana, and am in a position to state whether the Edgar claim was of a character that was susceptible of development into a farm and home. At that [465] time Edgar had two log houses; one he used to live in and one where he had a bunkhouse for his men; he had a stable, and the land he had cultivated was fenced. The fire I have spoken of destroyed his fence around his plowed ground, his garden. I recall the time when Henry F. Edgar made final proof upon his claim, in the early spring of 1886. I was a witness in that proceeding, which was held in Missoula. Attorney Thomas C. Marshall represented Mr. Edgar in that proceeding.

Q. Now, I will ask you what was the condition as to whether or not any standing timber remained on Henry F. Edgar's claim after the cutting you have testified to in the summer and early fall of 1886?

A. The only timber that was left was trees that were too small for saw logs at that time. I might

(Deposition of E. R. Kilburn.)

add to that, that at this day they take trees a good deal smaller than they did at that time; they might be called saw logs this year, but those days we did not take anything below twelve or fourteen inches on the stump.

(Witness Continuing:) I became familiar with section 28, township 14 north, range 16 west when I got a contract to log on section 33, in that township, in the fall of 1890. I built my camp on the northwest quarter of section 28; on the east side of the river; that would be on the right-hand side of the river going up stream. The Blackfoot River ran through the northwest quarter of that section. At that time no timber had been cut off that section 28, particularly the northwest quarter thereof. When I was there there wasn't any timber cut, but there was three or four dozen trees cut along there. I would not consider it any timber; the section was virgin as far as cutting timber would be considered, a virgin claim. I knew [466] William H. Longley. At that time he was living on the same quarter section, right across the river from where I built my camp—nearly directly across. I am familiar with the claim known as the Elijah Cunningham claim. That is the northwest quarter of section 34, township 14 north, range 14 west. In the fall of 1891, I logged all the timber adjacent to Big Fish Creek on that claim, and at the time I did so no timber whatever had been cut from said claim prior thereto, excepting a few trees cut for cabins and fencing. I am familiar with the south half of section 20, township 14

(Deposition of E. R. Kilburn.)

north, range 15 west, known as the Kilburn claim. I am the Kilburn whose name is given to this claim. I took up one hundred and sixty acres on said section 20. And when I did I examined the claim to determine whether the timber was standing on it and found the timber all standing there—none cut. I never cut anything from that claim and I sold the claim, and at the time I sold it no timber had been cut therefrom. I sold it to McLaren and McKinnon of Wisconsin.

Cross-examination.

I was born in New Brunswick, Canada, and came to the United States in January, 1884. I was twenty or twenty-one years old then. I became a naturalized citizen of the United States. I think it was in 1887 I got my second papers in Deer Lodge. I was living in Deer Lodge County then. I am a distant relative of A. B. Hammond. My mother and A. B. Hammond's mother were cousins. January, 1884, was the first time I met him. It was in Missoula. The circumstances surrounding my first meeting with him were when I came to this country, I wanted a job; Mr. Hammond was in the mercantile business here, I asked him for a job. He told me I could [467] go to work up the canyon, at the sawmill at Turah. I don't know whether this sawmill belonged to Eddy-Hammond and Company or the Montana Improvement Company, but whatever it was, I think A. B. Hammond was interested in it. A man by the name of Coombs was in charge there, and I worked at that camp about six weeks. From there I went to

(Deposition of E. R. Kilburn.)

Missoula, where I drove a delivery team for Eddy-Hammond & Company. My next employment was in the Blackfoot. I went up the Big Blackfoot in the fall of '85 and was hired by George L. Hammond. George L. Hammond asked me to go up there as timekeeper and scaler for him. When he asked me to do so I was not employed by Eddy-Hammond & Company. I was not employed by anybody. I commenced work for George L. Hammond at the Fish Creek Camp, in 1885, and remained at that camp until the spring of '87. I was not employed all of that time as timekeeper. In October, '86, I went to work for the Northern Pacific under W. A. Logue. So it is true that I did not work for George L. Hammond there at Fish Creek during all the time from '85 to 1887, but I stayed there in the camp. I was scaling for the Northern Pacific. George L. Hammond was superintendent of all the works and of the cutting of the timber that I was scaling for the Northern Pacific. During the time I worked under George L. Hammond at the Fish Creek Camp, I was paid by getting a time check on W. H. Hammond. Those time checks were usually cashed at his place of business at Bonner, and this method of payment continued as long as I worked for him; that is to say, until the fall of '86, when I went to work for the Northern Pacific. Henry or W. H. Hammond was in complete charge and control of all these operations during 1885 and 1886. I know it, for any time we had to get any orders, we always went to [468] W. H. Hammond. All the timber that was

(Deposition of E. R. Kilburn.)

cut up there during the years I worked there was cut for W. H. or Henry Hammond. It was in the fall of 1885 I did the first scaling on the Edgar claim. George L. Hammond directed me to do it. Mr. Edgar was present when that was directed—living there. Mr. Edgar was present on the claim when I was hauling some logs off it in the spring of '86 that he had left. I first got acquainted with Mr. Edgar the first year I was here in Montana, in 1884. Mr. Edgar moved on to his claim shortly after I went to Fish Creek Camp. I remained familiar with the claim after the timber was removed from it in 1886, off and on until 1891. I don't know the exact year that Mr. Edgar finally moved off the claim, but should judge about 1889. I was familiar with the claim from 1885 up until 1889, when it was occupied by Mr. Edgar; during the winter of 1887, I scaled logs for the Northern Pacific for the Headquarters Camp on Fish Creek. John Cunningham was not foreman of the camp in the winter of '87-'88. He was foreman of that camp probably in 1888. Cunningham went to the Eckwall Camp in the fall of '86, and was there the fall of '87 and part of the winter of '87. I am certain that no timber was cut off the Edgar claim by Cunningham in the winter of '87 and '88, that is, commencing in the fall of '87 and running into the spring of '88. There could not be any because Bob Moore had already cut it in the fall of 1886. I scaled a little of it, not all of it. J. B. Seeley took my place in October, 1886. I am not sure whether he scaled it or not. In the fall of '87 I was scaling logs for the

(Deposition of E. R. Kilburn.)

Northern Pacific on Montour Creek. I was not at Headquarters Camp in the fall of '87, nor the spring of 1888, but I can swear [469] there was not any timber cut off the Edgar claim from the fall of '87 until the spring of 1888, because it was all cut in the fall of 1886. I said awhile ago, there was not anything left but trees that were too small to make saw logs of at that time.

Q. Might there not have been saw logs cut the next winter and spring? A. No, they did not go back.

(Witness Continuing:) I am certain they did not go back—just as certain as if I was standing watching it all the time—which I was not doing; but there is no guess work, I know it. They did not go back there, for there was nothing there to cut. I said awhile ago there was some of those small trees standing there, but they would not send a crew back to cut them. That is my opinion. I don't believe they did. I am not positive about it any more than I am sure they did not go back on that claim after Moore got through cutting; the trees are there yet. I went all over the Edgar claim last month in company with W. H. Hammond, William Boyd, George Fox, Mr. Woodworth, and I believe Mr. Burnett was with us. On my last trip there I saw a patch of Canadian thistles, or some kind of thistle, indicating where there had been some cultivation **years and** years ago; that was the old garden spot where Edgar had his cultivation. I did not see any signs of or indications of cultivation outside of what I have said. This fire that ran through there in 1886

(Deposition of E. R. Kilburn.)

burned Edgar's fence. It was a log fence, probably then of a value of \$50.00. That was in the fall of '86, the early fall, that it was burned. About five or six hundred thousand feet had been cut from the [470] Edgar claim before that. The value of that five or six hundred thousand feet was \$1.00 a thousand standing; \$3.50 on the skidway; \$4.00 on the bank of the Blackfoot River. I do not know what Mr. Edgar received for that five or six hundred thousand feet of timber that was cut off prior to the fall of 1886. According to my rates \$1500.00 would be a big price for him to receive. I don't mean to say that the loss of \$50.00 worth of fence by fire in the fall of 1886, after he had presumably received this \$1500.00 for the timber, would have anything to do with preventing him from going on and cultivating and improving that claim. I came to be a final proof witness for Edgar because I was living near him. I don't know whether he asked me to be such witness or whether he put my name on. Mr. Thomas C. Marshall conducted the matter of making the final proof and attempting to secure patent. He was a lawyer here at that time and is now dead. I don't know whether he was an attorney for the Hammonds at that time. In later years he was their attorney. After I quit scaling on the Edgar claim and working for the Northern Pacific, I got a logging contract from George L. Hammond on Montour Creek. Montour Creek empties into the Big Blackfoot River about five miles west of Ovando. My next work for the Hammonds was in the fall of 1890, when

(Deposition of E. R. Kilburn.)

I got a contract from W. H. Hammond to log in section 33, township 14 north, range 16 west. During the fall of 1890 and the spring of 1891, I cut off said section 33. I built a set of camps on section 28 that winter. At that time I did not know where the lines of 28 was, but by the location of the camp I must have cut off of section 28 the material for building those camps. I cut off right east of the camp. I testified that no timber of any commercial value had been cut from the northwest quarter of section 28 [471] prior to 1890. I did not make any special examination to see whether timber had been cut or not, but by riding backwards and forwards over the section every day, I did observe there were no trees cut on that side of the river. On the other side of the river a few small trees had been cut for building purposes. I was riding over on that side of the river, too. I had business backwards and forwards. I crossed the river at that time on a bridge near the north line of 28. I know there was some cutting on the left-hand side of the river in the flat on the railroad section 29 about 1886 and 1887, but there was none on the flat on section 28. I will swear positively that from a logging standpoint there had not been any cutting on the Longley. Flat on the left-hand side of the river prior to 1889—that there had been none cut for any commercial purpose.

Friday, January 24, 1913.

[Deposition of W. H. Longley, for Defendant.]

The deposition of W. H. LONGLEY, a witness called and sworn on behalf of the defendant, was

(Deposition of W. H. Longley.)

offered and read in evidence by the defendant, as follows:

Direct Examination.

I reside at Missoula, Montana. I am familiar with the claim known by my name, situated in section 28, township 14 north, range 16 west. I settled on that claim in the spring of 1890. At that time no timber had been cut therefrom. I cut timber on that land myself in the winter of 1891; I cut timber on the south half of the northwest quarter on my claim; I would call it on the north side of the river. It was on the left-hand side of the river going up stream. Tuchenhausen assisted me in cutting that timber. At that time I cut somewhere in the neighborhood of 300,000 feet from my claim, I recall the land through which the Blackfoot River runs after it leaves my place—the land lying north of my place. [472] A man by the name of Merrick had a claim there. Merrick settled there after I did, and when he settled there I never noticed that any timber had been cut from it, except for the purpose of buildings, and so on. I built cabins on my claim. They were on the north side of the river, as I call it. The last cabin I built was pretty close to the Merrick claim, where the river runs through it. It could not have been more than thirty or forty rods, maybe.

Cross-examination.

I am fifty-eight years old; I was born in the city of New York and came to Montana twenty-five years ago this fall. I worked for A. B. Hammond, I think it was in '87, '88 and '89. I worked for him at the

(Deposition of W. H. Longley.)

Blackfoot Mill at Bonner; I was running a planer there. After I quit the mill at Bonner, I went up on to this claim then directly. As soon as I offered my final proof, I quit the land and sold it pretty quick afterwards; I sold it to Gus Moser. I knew Gus Moser was working for the Big Blackfoot Milling Company. I don't remember exactly whether Gus approached me first or I approached him. I went to a man by the name of Hershey to make my final proof on this claim. My final proof was made, I believe, in 1892. My proof witness was Merrick and some other fellow.

Redirect Examination.

I said I worked at Bonner, at the mill, in 1887, 1888 and 1889. Henry Hammond employed me to work there.

Q. You said on your direct examination that you worked for A. B. Hammond.

A. I supposed that was the same thing.

Q. But the person who employed you was W. H. Hammond? A. Yes. [473].

Q. You simply supposed A. B. Hammond was interested in that?

A. Yes; W. H. Hammond was the man I worked for.

[Deposition of William Tuchenhausen, for
Defendant.]

The deposition of WILLIAM TUCHENHAGEN, a witness called and examined on behalf of the defendant, was offered and read in evidence by the defendant, as follows:

(Deposition of William Tuchenhausen.)

Direct Examination.

I was born in Germany and am a naturalized citizen of the United States. I once worked in the Blackfoot Valley. I took up a claim there. It was on section 18, township 14 north, range 15 west. I had the southeast quarter of that section. I didn't get the full one hundred and sixty acres; it was a short section. I am well acquainted with that section 18; I lived there a little over two years and made my continuous residence there. I settled on that claim in 1889, in the spring. After I settled there, the claim was commonly known as the Tuchenhausen claim. I proved up on that claim about 1890. I filed in 1890. It was unsurveyed land when I settled; I got a final receipt for that land; patent issued to me for that land. After I had that claim about two years, maybe better, I sold it. I was familiar with this entire section 18 at the time I settled on what might perhaps be called the southeast quarter of it. At the time I settled on that section, no timber that I know had been cut from it; if there had been, I wouldn't have settled on it. I was familiar with the rest of the section. I went over it at the time I settled on my own particular part of it. At the time I sold my claim, some timber had been cut on my claim; I cut some for my buildings, and that is all that had been cut on my claim, for my buildings and fences, the biggest portion was cut on my claim. As to the rest of the section at the time I sold, [474] no timber had been cut off it; if any was removed, I removed it myself, as I may have possibly run over

(Deposition of William Tuchenhausen.)

the lines, but with that exception, no timber had been cut off that section at the time I sold the southeast quarter of it. After I sold this claim, two years or better after I settled on it, in the spring of 1889, I went to work for William H. Longley; that was two and a half or three miles just below me on the Black-foot River, on the property that was called the Longley claim. At that time Mr. Longley and his family were living on that claim. I built a house for Mr. Longley on the claim and when I was through building the house, I went to help him cut timber and pulled them into the river bank. It was on the left-hand side of the river, going up stream that I cut the timber from Longley's claim, and the house I built was on that same side of the river. I never scaled the logs I cut on Mr. Longley's place, but I judge there was between two and three hundred thousand feet of lumber sawed. At the time I cut Mr. Longley's claim, there had been no timber cut on it in addition to what I myself cut, as far as I know; the corners were there and I and Mr. Longley went to the corners and worked from the corners, so that we wouldn't go over on to somebody else, and I had to watch the lines. There was no other cutting, and I believe that the first cutting, the first logs that were cut there, were cut for those buildings.

[Deposition of Charles F. Malloch, for Defendant.]

The deposition of CHARLES F. MALLOCH, a witness called and sworn on behalf of the defendant, was offered and read in evidence by the defendant, as follows:

(Deposition of Charles F. Malloch.)

Direct Examination.

I reside at Lothrop, Missoula County, Montana. I knew of the claim known as the John Kelly claim; situated in [475] the northwest quarter of section 18, township 13 north, range 14 west. It was in 1896 that I was acquainted with that claim. I was sent up there by a party to scale a small quantity of timber they had on that location. I scaled the most of it; I think there was a little left. George Hammond cut that claim. I scaled the logs and reported to the office at Bonner. They were cutting while I was scaling. It is rather vague to me now as to the amount of timber that I scaled that had been cut on that claim; I think it was somewhere from twelve to thirteen hundred thousand. I don't remember whether or not at that time there was any evidence of any earlier cutting on that claim, such as stumps. The circumstance that fastened in my mind the particular year when I scaled that claim was that it was the year I came West; I had been East about three years, I think, and came West that year.

Cross-examination.

I don't think there was any old stumps at the place where I was scaling, but it is so long ago, I could not say positively; I made no examination of the surrounding land, there was some old cutting in that neighborhood; I don't know whether it was right up against that line; the sum total that I know about it is, that I just simply went up there and scaled on what they told me was the Kelly claim. I don't remember whether I looked at the lines or not; if I

(Deposition of Charles F. Malloch.)

looked at the lines I knew where they were, but I will positively swear that I followed the cutting up there that was being done by George Hammond, and that what they cut was known and called the Kelly claim. I don't think I knew Mr. Boles at that time; I did not talk with him about the cutting. I have not any recollection now of having heard at that time of any previous trouble [476] between Mr. Boles and Mr. George Hammond about cutting off that. If I had spent the whole winter, I would have a more definite idea of it. I was sent up there and they then asked me to take charge of the yard at Bonner; it was only a short time and it was so long ago it is very vague.

Q. Are you as vague, and indistinct and indefinite about the date as you are about the location?

A. Oh, no; I know it was in the fall of the year; I don't know the exact day I went out, but somewhere about the latter part of October, maybe a little later; when I came back I know there was snow on the ground.

(Witness Continuing:) W. H. Hammond directed me to go up there to do that scaling. Mr. A. B. Hammond had nothing to do with it that I know of; he was not up there; I was never employed by him.

Q. During the entire time you operated on the Blackfoot River, Mr. W. H. Hammond, or Henry Hammond, was in complete charge and control of it?

A. All the years I was there he was the man who had charge. That was from 1888 to 1893—then from '96 until he quit when they sold out—I think it was '98.

(Deposition of Charles F. Malloch.)

Redirect Examination.

At that time I did not scale anything else but the Kelly claim, and the scaling that I returned the amount of, was supposed to be the timber that they took off the Kelly claim. I know it was just about done when I left there; they might have cleaned a piece after.

Recross-examination.

I don't remember whether or not there was any cutting over the lines of the Kelly claim. I may or may not have known [477] exactly where the lines were. The scaling sheets were returned to the Bonner office. I had nothing to do with the office at Bonner. I am not sure who was in charge at that time. It seems to me Harrison was bookkeeper, I am not sure; there were several changes there, possibly Mr. Young was in charge at that time. At the time I was foreman at Bonner, I had charge of the billing of some of the lumber—the rough lumber from the yards. Along the first two or three years I billed the lumber from the planing mill, too. The lumber was billed from the station called Bonner on the Northern Pacific. I did all the billing. Whatever I sent out, I billed myself. The manner in which the lumber was billed when I first went there was as follows: There would be an order come in for a certain amount of lumber for a certain firm; that order was made out and sent to me and I would fill out the order, get it out and send my return to the office. For the first few years, W. H. Hammond was designated as consignor. I am under the impres-

(Deposition of Charles F. Malloch.)

sion that for about two or three years, it was some little time after 1888, Mr. Hammond continued to be designated as consignor of that lumber—at least until 1890. After that period of time I think it was the Blackfoot Milling and Manufacturing Company who was designated as consignor. I am a little vague whether that came first or not; then it was changed again—Big Blackfoot Milling Company, some little change, I have forgotten which came first. I am not sure if I was there when the transition from the Blackfoot Milling *Milling* and Manufacturing Company to the Big Blackfoot Milling Company took place; I think that was when I was away. It is a fact that W. H. Hammond or Henry Hammond continued there in absolute charge and control of that business during [478] all the changes, whatever they might have been, while I was working there; he had complete charge until they sold out to the Daly estate; then he had charge there for a short time after that. I could not tell you, not to be definite, how many years the lumber was billed out of Bonner in the name of the Blackfoot Milling and Manufacturing Company as consignor. I did not pay much attention to it; it was only a slight change anyway. It must have been a year or two.

Redirect Examination.

I do not pretend to know at all the precise period of time the lumber was shipped in the name of W. H. Hammond; nor the precise period of time the lumber was shipped, if it was shipped, in the name of the Blackfoot Milling and Manufacturing Company; nor

(Deposition of Charles F. Malloch.)

do I pretend to know the period of time it was shipped in the name of the Big Blackfoot Milling Company. I am not prepared to say whether or not the Blackfoot Milling and Manufacturing Company came into existence sometime before lumber was shipped in its name, if it was so shipped in its name. I do not know when the Blackfoot Milling and Manufacturing Company came into existence. I do not know how long it was in existence but I think some lumber was shipped in its name.

Recross-examination.

Q. You are pretty vague and indefinite about these transactions? A. It is a long time ago.

Q. You don't remember very much about it.

A. I have told you what I remember.

[Deposition of William Boyd, for Defendant.]

The deposition of WILLIAM BOYD, a witness called and sworn on behalf of the defendant, was offered and read in evidence [479] by the defendant, as follows:

Direct Examination.

I reside at Woodworth, Powell County, Montana. I am farming and stock-raising. I have some land in township 14 north, range 15 west, and some in township 16 north, range 15 west, in all about 3,200 acres; part of it is a hay farm and part of it is grazing. I am familiar with the tracts of land known as the Silvey claims, embracing the west half of the northeast quarter and the southeast quarter and the south half of the southwest quarter, all in section 22, township 14 north, range 14 west. I cut the tim-

(Deposition of William Boyd.)

ber off the Silvey claims; that was the fall of '92 and the winter of '93. At the time I cut the timber from the Silvey claims, no other timber had been cut there—that is, no logging timber; I can fasten the date in my mind, inasmuch as it was the election fall, the presidential election when Cleveland was elected. I recently visited said section 22; I think it was the 12th of last August; I went over the Silvey claims at that time; I followed the lines through. In cutting the Silvey claims I found I got over the line and cut a few trees from the northeast quarter of the northeast quarter—that is, over the line that divides the northeast quarter of the northeast quarter from the northwest quarter of the northeast quarter. When I went over these two Silvey claims on August 12 of last year I recognized the cutting as having been done by me at an earlier date. Before I revisited that ground on August 12, 1912, I did not know that I had gone beyond the boundary of the Silvey claims when I cut same in the fall of 1892 and the winter of 1893; I had not been on that part of the ground from the time I had logged it until here last August; I don't know how I made the mistake; never could understand it; never could [480] figure out how I got over that line there; I did not intend to go beyond the boundary of the Silvey claims in the location I have testified to; I had no intention of getting over the line at all. At the time I was cutting the Silvey claim and inadvertently got over the line, as I have testified to, I was working for W. H. Hammond or the Big Blackfoot Milling Com-

(Deposition of William Boyd.)

pany. I was not working on a salary; I was working under a contract; I had a contract for cutting and putting these logs into the Blackfoot off the Silvey claim. While I was cutting under contract for the Big Blackfoot Milling Company, I had instructions from W. H. Hammond not to go over the line and not to get into Government timber. I am familiar with the northwest quarter of section 34, township 14 north, range 14 west, also known as the Elijah Cunningham claim. I cut a part of that claim; that was in the fall of 1892 and the winter of 1893—the same time the Silvey claim was cut. As to the portion of that northwest quarter of section 34 that I cut, it was the part that sloped toward Little Fish Creek, the locations were sloped toward Little Fish Creek; that would be, I should say, the southwest portion of that section that I cut over. I found no evidence of any previous cutting of timber thereon. A part of this claim had been cut before I went on to it and I cut up to the old cutting. I am familiar with the claim known as the Kilburn claim, comprising the west half of the southwest quarter, the southeast quarter of the southwest quarter, and the southwest quarter of the southeast quarter of section 20, township 14 north, range 14 west. I owned that claim once. I bought it from McKinnon and McLaren, that was in 1898. At the time I bought that claim I noticed there was some timber cut on it, some ties, old ties [481] lying there. There was not a very big amount of it cut, if there would have been, I would not have bought

(Deposition of William Boyd.)

it, I would not have bought stumps. I examined this timber at the time I bought it and I cut timber on it—I don't remember how much—probably no more than two hundred and fifty or three hundred thousand feet, along there some place, I am not certain. The snow came on and I had to start hauling on account of going to haul on the other side of the river, hauled the logs I had cut in section 16.

Cross-examination.

I was born in Canada and came to Montana in 1884. I first commenced to work for W. H. Hammond in 1888.

Q. Did you ever work for A. B. Hammond?

A. Well, I don't know whom I was working for; I was working for the Hammond outfit, anyway.

(Witness Continuing:) I don't know whether A. B. or W. H. owned it. It was the Hammond outfit and was known as such throughout all that country. I don't know whether anybody knew whether it was A. B. or Henry Hammond, but I always done business with Henry Hammond. I don't know who owned it. I never had any business with A. B. Hammond at all; he never asked me any questions at all. I think I worked for W. H. Hammond along about nine or ten winters. Since I quit logging for Henry Hammond and the Big Blackfoot Milling Company I have had no business dealings with them. I don't know how long I owned this Kilburn claim on section 20—not very long. I sold it to Vogel. I cut some timber off it. I testified a while ago I cut something like two hundred and fifty or three hundred

(Deposition of William Boyd.)

thousand feet. Before that there had been very little timber cut on it. [482] I did not scale up to see how much had been cut before that. I did not pay a great deal of attention to it. I believe I got \$1400.00 for that Kilburn claim. I did the cutting on the Silvey claims in the fall of '92 and the winter of '93, the same time I cut off the Elijah Cunningham claim. Under the contract under which I cut off these claim, I believe I got \$3.00 for the Silvey claim and \$3.25 for what I got off section 34—that was for cutting, logging and banking the timber from these two tracts of land. I might have been on the south side of the Silvey claim different times from the time when I cut it until I went back there on August 12, 1912. I lived right close there the next summer for a while and used to pass through. It must have been about twenty years since I had been on the Silvey land. When I was cutting on the Silvey land, we had a man run the compass tracing out the lines of the Silvey claim. It was all blazed out. I did part of the blazing myself. I was looking for logging business then and George L. Hammond came over and showed me the lines, some of them were partially blazed out and some of them were renewed. I did not know at that time that I had cut over the line on the east side. I did not observe that until the 12th day of August, 1912. I must have seen the line blazed out over which I cut in 1891 and 1892, but I did not notice it. I was particular at that time in following the instructions of W. H. Hammond not to go over the lines. I got over for some reason

(Deposition of William Boyd.)

or other; I never could figure it out any more than there might have been trees blazed along there. I knew where the line was. I disobeyed Hammond's instructions because I happened to do it. I did not intend to go over that line at all. I did go over it. I banked these logs and they went to the Bonner Mill. I never [483] heard of any objection from Hammond, or anyone else, about receiving those logs. John Hammond scaled part of those logs and Ed Gregg was on the job that year, scaling. A fellow by the name of Barrett rescaled that winter on the landing. I have seen the scaling sheets that were made out when they were scaling timber off the Silvey claim. I don't think there were any logs marked on these scaling sheets as having been cut off the line over the east half of the northeast quarter of section 22. If the scalers had noticed it, they would have marked it. I did not notice any mark that way.

Q. You did not see any memorandum made there indicating the logs that were cut off the Silvey claim and those that were not cut off it, over on to the east line?

A. I think not, I don't know, but I don't think anybody had discovered it.

Q. Calling your attention to the time you cut over the line, as testified, in section 22, did you report to anyone about cutting beyond the line at that time?

A. No, I did not know it.

Q. So far as you know, the Company knew nothing about your having cut beyond the line?

A. I don't believe the company knew anything about it; sure they didn't know anything about it.

[Deposition of John C. Hammond, for Defendant.]

The deposition of JOHN C. HAMMOND, a witness called and sworn on behalf of the defendant, was offered and read in evidence by the defendant, as follows:

Direct Examination.

I reside at Coeur d'Alene City, Idaho. I am a lumber scaler and estimator by occupation. I was born in the State of Maine and am sixty-six years old. In the fall of 1891 and [484] winter of 1892, I was scaling for Ernest R. Kilburn. I was making my headquarters at the Fish Creek Camp, Headquarters Camp. Kilburn was cutting logs from the Sontag claim and part of the Cunningham claim, and I was scaling these logs. The Cunningham claim that I refer to is the Elijah Cunningham claim, and my duties in connection with the scaling on the Cunningham claim and the Sontag claim were the same—though I kept separate scales. I remember William H. Longley and his family well. I remember his claim on the Blackfoot River, about twelve miles east of Bonner. I think it was in 1892 that I did some scaling on that claim; he had cut some logs there; a fire had gone through it and there was somewhere in the neighborhood of two hundred and fifty or three hundred thousand feet of logs cut. I scaled these logs and while I was scaling them stopped there with the Longleys. I was there two or three days. These logs were sap stained, that is, they were burned and the sap of the logs was all stained black or rather blue. During the fall of

(Deposition of John C. Hammond.)

1892 and winter of 1893, I scaled for William Boyd. He cut the Silvey claims; Silvey had two claims. He cut those and he cut the balance that was left on the Cunningham claim and cleaned up section 34; there was some logs on section 34 that the company got a permit to cut. That was the same Elijah Cunningham claim that I have testified to as having been partially cut by Mr. Kilburn. As to the length of time I was working up the Blackfoot River in connection with W. H. Hammond, I went to work there in 1888 and worked there for W. H. Hammond until 1892, and then I think it was the Big Blackfoot Milling Company; I kept on working for them. I left their employment about 1896 or 1897. During the time I was in the employ of W. H. [485] Hammond and the Big Blackfoot Milling Company, I received my orders and instructions from W. H. Hammond and George L. Hammond. I never received any instructions from A. B. Hammond. I received instructions while working for the people mentioned from W. H. Hammond and from George L. Hammond to look after the sawyers and see that they did not get across the lines.

Cross-examination.

I am a double cousin of George L. Hammond and A. B. Hammond. I first met A. B. Hammond when we were children. I met A. B. Hammond in Helena when I first came to Montana. He had a lumber yard in Helena and I met him there. I had no conversation with A. B. Hammond prior to coming to Clinton about my employment in the lumber busi-

(Deposition of John C. Hammond.)

ness here. At Clinton I met George Hammond. I accompanied George Hammond on a trip up the Blackfoot and remained at Fish Creek Camp for six or seven days, and was then taken sick. I was regularly employed in 1888. The first scaling I did for Hammond was in the fall of 1888. When I was doing the scaling I had no supervision over any of the cutting more than to look after the sawyers, to see that they didn't get over the line. Once in awhile, I found a place where they did get off the line—very seldom.

Q. Did you make a separate report on your scaling sheet, when you cut off the quarter, or would you just bunch that?

A. I remember sometimes where they started to cut over, we stopped them.

(Witness Continuing:) When I found trees that were down, they were left there. I don't know whether they were left there permanently or whether they were put in the drive. I couldn't tell after they got into the river whether they came off one quarter or off another. [486] George L. Hammond would give us the portions of land from which the timber was to be cut and the lands on which I was to scale timber that had already been cut.

Q. Did you get any of those from W. H. Hammond?

A. Well, we got them this way. He would tell me to go up there and to start with such and such a man on such and such a section; that would be about all. George L. Hammond run the lines; I used to run

(Deposition of John C. Hammond.)

them with him. These were section lines, but if it was necessary, we would run a quarter section.

(Witness Continuing:) In reality, I cannot say of my own knowledge that any of that timber was ever rejected and kept out of the drive, because it had been cut over the line. I was in and around Headquarters Camp from 1887 to 1893, and during that time I never saw A. B. Hammond up the Blackfoot. I was paid for my services by the month. If I happened to be at Bonner, I was paid in cash and if I was up there, they would send me a check. The check was drawn on the First National Bank of Missoula, and W. H. Hammond, if he was not gone, he would sign them; if he did not, then the book-keeper did it, or the treasurer. A man by the name of Young was treasurer for a long while and then there was another by the name of Harrison. During all the time I was working from 1887 to 1893, I used to see A. B. Hammond when I came to Missoula. I had never any conversation with him about the cutting of timber. He never talked logging to me at all, from the first I saw of him in this country until I left him, never a word. He would ask how I was getting on. [487]

Jack Cunningham was on Nine Mile Prairie; that was before my time. He was at the old Headquarters Camp the fall of '87, when I took sick; he took me down the river in a batteau to Bonner. I know where Sunset Post Office is, and I scaled in that vicinity in the fall of '88 and the winter of '89. I knew J. M. Boles. I never heard of there

(Deposition of John C. Hammond.)

being any trouble between Mr. Boles and Mr. Hammond about driving the logs out from the south of the house there. I don't remember whether I scaled any south of the Sunset Post Office in the winter of '90 and 1891; I don't know who logged there. It was the winter of '88 and '89 that I scaled in the vicinity of the Boles' house; I think that was section 1; I did not scale any even section in there; I did not scale any in section 18, township 13 north, range 14 west; I have never been over it at any time to see whether or not it had been scaled or cut, so I don't know when that was cut.

Redirect Examination.

It was in 1890 that I scaled on Belmont Creek and when I scaled on the claim of William Longley, it was on the same side of the river as that on which Mr. Longley's house was situated; I am sure of this because I went there and stopped with Mr. Longley and his wife and family. The Longley house is situated on the left-hand side of the river going up stream; I think that is the west side, but I am not sure as to the points of the compass; at that time Longley had built himself a good new house and there was another shack there and a barn, and these were all on the same side of the river; all the scaling I did was on the side of the river on which Longley's house was situated; I didn't do any on the opposite side of the river; as to this sap stained timber on the Longley claim, [488] about which I testified, the fire had gone through where the timber was logged; some of the trees had fallen down, or blown down,

(Deposition of John C. Hammond.)

but the fire had gone through there and burned in the neighborhood of two hundred and fifty or three hundred thousand feet; I sent the scaling sheets to Bonner; they were addressed to the company; I don't remember whether any were addressed to the Blackfoot Milling and Manufacturing Company. I know I sent scaling sheets to the Big Blackfoot Milling Company.

Recross-examination.

I might be mixed in the dates as to when these corporations and concerns were running that mill. I cannot tell you now the date when each one was in existence, nor to which one I sent my scaling sheets for any particular time.

Q. It was all supposed to belong to some of the Hammonds, and that was about all you knew about it?

A. That is all I knew about it. I knew this about it, at the time I don't know who owned the property, but W. H. Hammond, that is Henry Hammond, he had leased the whole thing and the business was done under his name. I don't know what the terms of the lease were, or anything about their business at all.

Redirect Examination.

Q. I will have to bother you a little about these dates: You have testified that in the fall of 1891 and the winter of 1892 you worked, scaling, where Mr. Kilburn had cut; is that correct?

A. Well, the only way I can get it is to go back to the first year I was up there, that was the fall of 1888 and the winter of 1889, when I worked at Bob

(Deposition of John C. Hammond.)

Moore's camp at Elk Creek; the next year was the fall of 1889 and the winter of 1890, that [489] year I scaled for Jack Dunnigan, opposite Ovando; the next year I scaled for Jack Dunnigan again down on Belmont Creek.

(Witness Continuing:) In the fall of 1891 and the winter of 1892, I scaled for Kilburn; and the next logging year after that, the fall of the next year and the winter months following, I scaled for Boyd on that same ground; it was a good long while ago and I never kept a record of those places, but I can state from where I began and follow it right down through.

Tuesday, January 28, 1913.

[Testimony of G. W. Fenwick, for Defendant.]

G. W. FENWICK, a witness called, sworn and examined on behalf of the defendant, testified as follows:

Direct Examination.

My business residence is in Eureka; my family is at the present time living at 2910 Piedmont Avenue, Berkeley; I am vice-president and manager of the Hammond Lumber Company interests in Northern California, and my headquarters are at Eureka, Humboldt County, California; I have resided in California twelve years; my wife is Mr. A. B. Hammond's sister. I first went to the State of Montana in the early fall of 1883, and engaged in the lumber business at that time at Wallace, fifteen or seventeen miles east of Missoula, in the Hellgate Canyon. The

(Testimony of G. W. Fenwick.)

Montana Improvement Company was my employer in the Hellgate Canyon about two and one-half years. I have been in court here and am familiar with the lands involved in this case in the Hellgate. I am not very familiar with the Blackfoot. No lands connected with the Wallace Mills are involved in this suit. Wallace was eight miles down stream from Bonita—west of Bonita. I entered my employment in the Montana Improvement Company in the early spring of 1886. The Montana Improvement [490] Company ceased logging at the Wallace Mills in 1884 and business was cleaned up in 1885. After I ceased my employment with the Montana Improvement Company I purchased the mill of Fred A. Hammond at Bonita. That mill was located on section 14, township 11 north, range 16 west. I made that purchase in May, 1886. I conducted my negotiations with Fred A. Hammond for that purchase. There was no written conveyance from Fred A. Hammond to me conveying the property in question. The property was carefully inventoried. I had a complete inventory of all the property made. I paid Fred A. Hammond about \$25,000.00 for the property—\$25,000.00 or \$27,000.00—I don't recollect the exact amount. At the time of that purchase there was a mill erected and in operation upon section 14, at Bonita. That mill had a capacity output of about 20,000 feet of lumber per day, on the average, every day it ran. The value of such a mill at that time, in its then condition when I bought it, including railroad spur connections and the general buildings like

(Testimony of G. W. Fenwick.)

a cook-house and other necessary buildings, was about seven or eight thousand dollars. In addition to the mill, I acquired a complete logging outfit in the way of teams, trucks, sleds and logs and also logs that had been banked or partially gotten out in the winter of 1885 and 1886. There was a quantity of sawed lumber in the yard. At the time I purchased the mill at Bonita, I was familiar with the land in the Hellgate River country. I was up and down there at all times for a year or two before that. As to the general appearance of the Hellgate Canyon at the time I knew it, prior to the time that I became the proprietor of the Bonita sawmill, as the name implies, it was a canyon; that is, in most places the mountains arose abruptly from the river on [491] either side. Here and there were gulches that came in, along which logs were taken out. On the south side, the mountains, in almost every case along the river, rose precipitously from the river to a great height; on the north side of the river, starting slightly west of the mill on section 10, that was the only ranch property. There was quite a flat there of probably two or three hundred acres of good bottom land. That was the only ranch between that and the section on what is known as Tyler Gulch, township 11 north, range 15 west. I don't think there was anything raised at all in the way of vegetables, or hay or grain along there outside of on the Cramer ranch at that time. As to the distance between the bed of the river and the mountains that arose to the north and south of the Hellgate Canyon,

(Testimony of G. W. Fenwick.)

on the south side there was a little flat in section 12, township 11 north, range 16 west, and running back a few hundred yards, then the mountains rose very precipitously. In section 7, township 11 north, range 15 west, there is a flat there extending in back into a canyon running out of section 6, in said township, and widening out to a flat on section 7. The canyon runs down from section 6 into section 7. On section 12, township 11 north, range 16 west, just below that on the north side of the river, the mountains there rose very abruptly from the river, almost perpendicular, to a great height. In regard to sections 6, 18, 17, 20, 21, and 22, in township 11 north, range 15 west, it is all a steep gulch, steep mountains on the south side, along the whole south side of the river. At said section 22, there was a little flat running for about 100 yards. The Northern Pacific Railroad had been built two or three years before I purchased the Bonita Mill, and it ran through the Hellgate Canyon. That railroad [492] crossed the river, I think, three or four times between Bonita and a place in section 26, in township 11 north, range 15 west, known as Tyler's Gulch or McCarty's Bridge. The county road at that time ran on the north side of the river. At the time I knew this Hellgate Canyon and before I purchased the Bonita Mill, there had been a mill south of the river on section 12, in township 11 north, range 16 west. This was on the flat land I testified to. At that time the river ran more to the north on section 12. It has been changed by the Northern Pacific and the Mil-

(Testimony of G. W. Fenwick.)

waukee Railroad coming through there. That mill was known as the Haycock Mill. It was not in operation after I purchased the Bonita Mill. When I came to Bonita, the Haycock Mill had been closed down a few months before I came. It had been cutting over the flat on that section. I visited the Haycock Mill and in the vicinity of the property I saw three or four hundred thousand feet of heavy timber and boards and piling up there in the yard, stacked up in regular shape. There were bridge timbers and railroad ties and inch and two inch **lumber**, mostly. The term "cribbing" or "cribs," used in railroad construction, applies to timbers that have been hewn out on two sides, thereby giving them two flat sides and they are used for cribbing up and for culvert work. By cribbing, I mean supports on the sides of the culverts, the timbers lying on the flat side. Stulls are round trees or round logs, used in mining to support the square timbers. Regular logs were taken for stulls throughout the Hellgate. There would be no difference in the appearance of the ground if timber had been felled for stulls or if it had been felled for saw logs. The logs would be removed just the same as if they were being removed to a sawmill; [493] nor is there any difference in the character of logs taken to the mill and sawed for the purpose of railroad construction and those logs used ordinarily in running a mill. All sizes of timber are used in railroad construction work from 6x8, perhaps up to 8x16 or 12x12. Five or six logs on the average in that part of the country would

(Testimony of G. W. Fenwick.)

make a thousand feet of lumber. The average timber was ten or twelve inches in diameter. Piles are cut in the woods, and while they may be barked, sometimes they are hauled in round shape, and while sometimes square piles are driven, generally they are driven in a round condition by the pile-driver. They run as large as it is possible to drive them in or get them through the gin, which is about 18 inches at the top. I knew of piles being used in the construction of the Northern Pacific. I saw hundreds of thousands of piles being used on the Northern Pacific. The dimensions of these piles would be as follows: At the top or small end they would run as low as eight inches in diameter; at the butt end as high as sixteen or eighteen inches in diameter, just as large as they could get them through the machine. There was no difference whatever in the appearance of a stump after the tree had been logged for a pile than when it had been logged for cutting lumber in a mill. When I arrived in the Hellgate country, I saw thousands of piles lying along the right of way at different points on the Northern Pacific, from McCarty's bridge on section 26, township 11 north, range 15 west, to Wallace, down below on the Hellgate. In all the bridges in the Hellgate Canyon there were piles driven at the approaches and in all the dry gulches, and in fact, the greater part of the original work done was pile work. Of course, in the case of bridges, [494] they would drive the piles and put the caps on, then put the stringers on, making a trestle. There was an immense amount

(Testimony of G. W. Fenwick.)

of logs that would otherwise have been suitable for mill logs, used as unsawed piling along the line of the Northern Pacific Railroad within the vicinity of the Hellgate Canyon. I cannot give an estimate. As to any particular part of a railroad or bridge which contained piling, the greatest amount of piling nearest to the Bonita Station was in a bridge across the Hellgate River less than half a mile from the mill, and I would say, taking the approaches there and the trestles that led up to it between the Beaver Tail cut and that bridge, there was three or four hundred thousand feet of piling; that is a very approximate estimate. Railroad ties are used at the rate of about 2,500 to a mile of railroad construction, that is, a tie to every two feet. There are 32 feet, board measure, of lumber in each tie. By board measure, we mean the reduction of a piece of lumber to actual board measure—a board 12 feet long, 12 inches wide and 1 inch thick would have 12 square feet. The unit of measurement is a board 1x12x12. Ties are used, both sawed and hewn. On bridges, it is customary to put in sawed ties. On railroad work they were mostly at that time on the Northern Pacific all hewn ties, that is, faced on two sides. Of course, a tie was not necessarily a very large stick of timber; the face would be from 6 to 8 or 10 inches; an 8 or 10 inch face would be quite a tree, 5 or 6 inches would be small; a 5 or 6 inch tie would take a tree 8 or 9 inches in diameter. An 8 or 9 inch tree is suitable for logging purposes; it is cut into small dimension stuff. In the early days they

(Testimony of G. W. Fenwick.)

did not cut so much of that size. I knew of trees being felled and they would leave the butt or first two cuts in the woods on [495] account of its size. When they got up to where it is 10 or 12 inches in diameter, about 10 inches in diameter, they would cut it into ties. A saw tie would be taken from an ordinary saw log. Prior to the time of my purchase of the Bonita Mill, wherever I cruised for timber along the Hellgate, I observed the extent of cutting and I observed it contiguous or close to the river and more especially on section 12, township 11 north, range 16 west and sections 18 and 20, in township 11 north, range 15 west. In those handy sections there, I found evidences of timber having been cut there before, more especially on the south side of the river, because it was handy to the river. I found it on both railroad lands, or odd sections, as well as on government lands. Close to the river there were stumps all along the river scattered through the timber. By close to the river, I mean more especially within an eighth or a quarter of a mile from the river—depending upon the topography of the land. If the mountains rose abruptly from the river, the operations did not extend up into the hill very far. I never sold any lumber to the Montana Improvement Company; I sold lumber to the Anaconda Mining Company. I stood in the relation of an agent to the Anaconda Mining Company. I had my mill and my logging equipment and I had contracts extending over a number of years. My contract was in writing. I don't know what became of it. That is

(Testimony of G. W. Fenwick.)

twenty-five years ago. I could not find it. I had a copy of that contract myself and the Anaconda Mining Company also had a copy. I asked them for the copy two or three years ago. I made a search for them and they were all gone. None of my contracts were ever placed of record. As to the terms of these contracts, they required that I cut [496] and deliver on the cars a certain amount of mining timbers and small material at a certain price; the understanding being that I was to provide the teams and manufacture the lumber, and compensation was given to me as agent at the rate of a certain amount per thousand feet for said material on the cars at Bonita Station. Any lumber that the Anaconda Mining Company were unable to take, I was allowed to sell to outside parties. The contract was between Marcus Daly of the Anaconda Mining Company and G. W. Fenwick, who had a mill at Bonita Station. It was agreed that Fenwick had a sawmill and was the owner of teams and he agreed to furnish Mr. Daly a certain number of million feet of mining timbers for his mines; Daly, in turn, appointed Fenwick on the other side, as agent, to do this work for the Anaconda Mining Company. The compensation for the agency for doing the work was to be at the rate of a certain fixed amount per thousand, which varied, some years with another, for the timber on the car. I have given, as nearly as possible, the substance of that arrangement. It provided for the size of the timbers, but those are matters of detail. I cut timber under that arrangement practically

(Testimony of G. W. Fenwick.)

during all the time I was operating the mill at Bonita. The character of the timber that I cut was mostly 10x10 square timbers for the mines and two inch planking, and then ordinary dimension lumber for buildings around the mines, but the large part of the timber would be mining timbers and planks. In regard to the cutting charged in the complaint in this case, I cut on some of the sections named therein; I cut some on section 2-11-16. I am not so sure as to whether I cut any on section 10-11-16. I could not state positively I cut any there, because I might have been on railroad land south of that or north of that. I cut some [497] on section 14-11-16, where the mill was; I did not cut any on section 12-11-16 south of the river, but I am inclined to think I cut some on that section on the north side of the river. I am not sure. Section 6-11-15 is Rich's Gulch. I did not cut any timber on section 6 coming out of Rich's Gulch, that I know of. I did not cut any timber on section 8-11-15 at all. I did not cut on any section south of the river west of section 26-11-15 other than on section 14-11-16, as already testified to, with the exception of a few logs cut off a corner on a little place close to the river on sections 20 and 22-11-15. I did not cut any on section 18-11-15. On said section 22 I cut a narrow strip on the south side of the river. Those logs were dragged or go-deviled to the river. There was no trucking sledding of logs anywhere on the south side of the river between section 14-11-16 and section 26-11-15. All that I took either from section 20 or from

(Testimony of G. W. Fenwick.)

section 22, in township 11 north, range 15 west, were go-deviled to the river. We go-deviled to the river a hundred or two hundred yards. It was not customary to go-devil for a greater distance from the river than that. We did what we call shore logging. Where I took these logs from section 22-11-15, there had been previous cutting of logs there, evidenced by the stumps. As to the trees that I cut on the south side of the river, I may have cut larger trees than those that had been cut as evidenced by the stumps remaining. I would naturally take the best trees, but I do not know that I can state there was any marked difference between the stumps of the trees that I cut and those that were cut before. There were stumps of the same character that were left behind resulting from my own cutting. As to section 26-11-15, I may have cut some myself in the northeast corner of it. I would not be sure that I crossed the line. There were no lines run there and I could [498] not determine it. We logged from that vicinity a matter of a couple of weeks with a small crew and I may have cut in that corner. I never cut more than the one time in that section. In addition to that cutting there, I employed a contractor in that vicinity. He was on section 23, directly north of it. That would be in the winter of 1889-90, I think. From a careful examination made since that time, I am satisfied he did not cut at all on section 26. I have been over the ground since then. The bulk of the cutting was on section 23. In reference to section 14-11-16, before I purchased the

(Testimony of G. W. Fenwick.)

mill from Fred Hammond, there were some evidences of timber having been cut there. I did little or no logging on the north half of section 14, from the fact that it was a place where we turned out our horses, pasture land. The river ran through a part of it and we had our logging pond there; in the other part, in the northeast quarter, there was a cottonwood swamp and in the northwest quarter—there were very few logs cut by anyone on the north half of section 14. As to the south half of section 14, I cut some logs on it. I never regarded section 14 as good timberland at all. Gillespie Gulch ran north towards the river and extended up into section 23 immediately south of that—a mile probably. There seemed to be two gulches known as Welch's Gulch, as was brought out in the depositions of the different witnesses read here. The main Welch Gulch was on the north side of the river, running through the southeast corner of section 2, and up into section 1, all in township 11 north, range 16 west; that is what was known as Welch's Gulch over there. The mouth of the gulch was on the north side of section 11, right up on the north line of section 11-11-16. The other Welch Gulch was on the south half of section [499] 14-11-16. In the southwest portion of 14, right near where Harper and Baird's operations were. After I left there, Welch Gulch, what was known as the John Welch Gulch, was near the center of the section. My recollection is that while I was there the Welch Gulch was in the southwest quarter. I testified that when I went there I found

(Testimony of G. W. Fenwick.)

evidences of timbers having been taken and ties for railroad purposes and piles. The appearance to-day of this land in section 14 south of where my mill was, as compared with its appearance at the time I went away, is that when I left there in 1890, standing at the millsite and looking up the side hill towards the south half of section 14, it was still forest. You could not tell at a distance that there had been any trees taken off the south half of section 14. The forest looked to be in its primeval state. Its present condition now is that there are farms in there, several ranches in there. The small stuff is cut off and a fire has gone through it. I do not know where the records of my mill are. This was twenty-five years ago. I last saw them years before we sold out at Bonner. I have no idea what became of them. I dismissed them from my mind. It was a wholesale business and they were not preserved. I have a general idea what the bulk of my business was, but not over one section like that. I did not attach much importance to section 14 because I did not consider it a well timbered section. At that time I did not know the particular section on which I was doing the cutting. It was not surveyed at all. None of the land there was surveyed, except the Cramer ranch. At the time the cutting was done, there were no lines or corners. I did not know I was on section 14 then. When I examined the property last September, I looked at the stumps on section 14. South of the river I observed that a fire had been over that [500] section in places. I would not say it had

(Testimony of G. W. Fenwick.)

been over all of it. There was nothing in the appearance of the stumps there from which I could tell what had been taken by me and what had been taken by others. I have been familiar with timber cutting since 1883, and more or less in Canada before I came here, although I was not a practical logger. I have been continuously in the lumber business since 1883, and I am familiar with the woods and all forms of the lumber business. There was no fire through this country while I was engaged in milling there, but all through this country I saw evidences of fire, especially on the south side of the river, since I had my mill there. As to section 10-11-16, we logged some on the side hill, but I am not positive as to any definite amount taken on that section. Beaver Tail Hill ran up on the west side of section 11 and the west side of section 2, in township 11 north, range 16 west. The end of Beaver Tail Hill was directly opposite the mill. It ran about two miles up into the west part of section 2 and section 11, in township 11 north, range 16 west. I did not take any trees on the southeast quarter of section 10-11-16. I did not log in there myself. I think I cut timber off the north half of the northwest quarter and the northwest quarter of the northeast quarter—that north tier of forties in said section 10. I took along that side hill; of course, I don't know where it was. I don't know very well yet. I don't know of my own knowledge. With reference to this neighborhood, there are other sections not involved in this action from which I took timber; I took timber from the

(Testimony of G. W. Fenwick.)

north and I may have taken from the west. I am not positive about it. I am not able to tell how much timber I took from that entire section of country to the north, east and west; if I took any from that section 10, [501] I am not able to say how much I took. Cramer Gulch was on the west side of section 2 and the east side of section 10, in township 11 north, range 16 west. It runs west of Beaver Tail Hill, parallel with it on the west. It extends up into section 2. I have been in section 2 in the same township. I have been in this section 2 since it was surveyed. I know where the south line of section 2 is. I had it definitely pointed out to me by an engineer. At the time of the so-called log war, I know where Thompson was cutting and where I was cutting, and I have examined section 2 with reference to the location of the log war. That log war extended on the east side of Cramer Gulch, down south of the north line of section 2. The character of the country into which it extended was level—right along the gulch, and heavy timber. There was no difficulty in hauling logs from the lower part of that gulch up to where the Thompson people had their mill. It was only a matter of a quarter or a half mile, and it is practically level. It might be about a 1% grade. The main road runs up the canyon, and the greater part of that I built. It was over a swamp. All the country is practically denuded up there now. In that section 2, when I left it, the best of timber was cut.

Q. With reference to the taking of logs, how far

(Testimony of G. W. Fenwick.)

into the territory that you took logs from did they come, how far into the territory where you were taking logs did they go?

A. We cut right through each other on sections 2 and 35, in township 12 north, range 16 west. We had skidways there where the log war was being carried on and they felled their trees right on to our skidways. I have no recollection as to how much I took off that section. I have no means at this date of determining or ascertaining which ones of the stumps left there represented trees taken by me and which [502] of the stumps represent trees taken by the Thompson outfit.

(Witness Continuing:) I do not know whether I took any timber from section 2-11-16 that went down Welch's Gulch. I may have. If I did, I probably took a couple of hundred thousand feet. I am uncertain with regard to it because the operation there extended into section 1, township 11 north, range 16 west, as testified to here by Robert Harper for the prosecution. I am uncertain as to whether I cut there or not, inasmuch as if there was any cutting done there, it was by contract. I have no personal knowledge of any cutting on section 2 in the vicinity of Welch's Gulch of logs that went to my mill. In regard to section 12-11-16, I did no cutting on the south side of 12 at all. I am not positive I took any logs on section 12, I think I did. If any were taken off section 12 by me, they came down off the side hill near the river. I never took any far back from the river on section 12 at that time. With

(Testimony of G. W. Fenwick.)

regard to section 6-11-15, I took none off section 6—I took none off Rich's Gulch on that section. I took no logs off section 8. I have been on the south lines of each of these sections. The corners were pointed out to me of the south and west lines of section 8. Mr. C. E. Woodworth, an engineer, was on the ground with me on section 8. Mr. Wills was with me on section 7. Robert Harper logged on section 8 and Dan McQuarrie logged on section 6—all these in township 11 north, range 15 west. Robert Harper did not have any of his people do any logging on said section 8 for me. On section 8 there was a sawmill to my knowledge in 1897, 1898 or 1899. There was a mill there for several years; that was called Harper and Baird's mill. That is about a half or a quarter [503] of a mile above the south line of that section 8. I don't think I testified that I took any logs from section 18-11-15 at all.

Q. I understood you to say that you had taken some from along the river? A. Perhaps so.

The COURT.—You stated near the river you did what you call shore logging?

A. Yes.

(Witness Continuing:) I don't think I took any off section 18. Off of that corner of section 20-11-15, from personal inspection, I think I logged that corner. There were evidences there of stumps before I did any logging there—stumps all along the river. I have no means of stating how many logs I took from said section 20. I could not tell from an inspection of the ground whether the logs that

(Testimony of G. W. Fenwick.)

were taken from there went to my mill or went to other persons. Since I operated there all kinds of mills have been in that country. With reference to the logging that was done on section 22-11-15, I have no method of telling how many logs went to my mill. There were no lines and no corners upon those lands and no land marks that would define my location when I operated there; so with regard to section 26-11-15, I testified that I logged there for about two weeks; I have no method of telling what logs were taken from that section. I have been over the ground since. It has been cut over since the logging was done there by me.

Q. Where, with reference to the place that you logged has the logging been done? [504]

A. The northeast corner, very near the corner, is where the mill was located and there is evidence still there of sawdust piles—the northeast corner of section 26. It is either on 26 or 23, the adjoining section that the mill is, very near the corner. There is evidence of extensive logging operations on what we call Tyler Creek.

Q. Where, along the Tyler Creek, with regard to the two weeks' work that you say you did there, was the logging done?

A. Further up the creek, on both sides of the hill, six or seven hundred feet above the bed of the creek.

(Witness Continuing:) When I was on the ground recently in that section 26, I saw coppering done in the northeast corner of that section. By coppering, I mean placing a piece of rock or bark on a stump, to indicate that it has been counted.

(Testimony of G. W. Fenwick.)

With reference to the work that I did during that two weeks, in section 26, I found the coppering done further up on the hill; further away from our operations. I certainly had not cut the logs up in the hills where I found these stumps coppered. At the time I purchased this mill, the negotiations therefor were altogether with Fred A. Hammond. I had no negotiations upon the subject with A. B. Hammond. Fred Hammond was the owner of the mill and ran it. At that time I was living quite near him. Mr. Hathaway's memory is wrong when he stated my relations with Mr. Fred Hammond were strained and that we were not on speaking terms. Fred Hammond and I were on the best of terms. There was a little personal matter there between us which had no bearing on the business. The personal matter came up afterwards, in point of time, to the purchasing of the mill. It cut no [505] figure between Fred Hammond and myself. It was shortly after I purchased the mill. There never was a time when I was not on speaking terms with Fred Hammond. Mr. Hathaway came to take this inventory, because in our negotiations, which lasted some little time, extended over a week or two or three weeks, Fred Hammond and myself agreed to have Mr. Hathaway participate or to act to represent him in taking the inventory. I would look after my own interests and Mr. Hathaway was to help count up the logs and the timber and make up the inventory for Fred Hammond and figure it up and arrive at some price. Mr. Hathaway had nothing else whatever to do with the transaction than take the inventory.

(Testimony of G. W. Fenwick.)

Hathaway happened to be selected to take the inventory because Fred Hammond and myself agreed on him. I don't know how he happened to come there to take the inventory. I may have sent word to him myself or Fred Hammond may have done it, or I may have requested anyone in the office in Missoula to tell him. I know he would have come if I had asked him. The office at Missoula which I refer to—Mr. E. A. Winstanley was the clerical man in that office. Mr. Hathaway was on the road selling lumber. This lumber office was upstairs over the office of the Missoula Mercantile Company; a separate and distinct office for the lumber interests. The stairs led up from the outside. I think it was also the office of the Montana Improvement Company. Regarding Mr. Winstanley's relation to our mill, our mill was located where there was no postoffice and no safe, no place to keep any records, and I could not send my invoices out. I arranged with Mr. Winstanley to do the necessary clerical work in connection with the books. I would report the shipments to Mr. Winstanley, and he would make a proper entry and proper charge and send [506] the invoices to the party receiving the lumber, the Anaconda Mining Company. I paid Mr. Winstanley for his services all of the years he worked for me.

Q. Did Mr. A. B. Hammond have any interest, either directly or indirectly, in your purchase of the Bonita Mill?

A. Not one cent; either directly or indirectly; nor did Mr. Eddy; nor did the Missoula Mercantile Company; nor anybody else, either directly or indirectly.

(Testimony of G. W. Fenwick.)

He had no interest whatever. The matter was a strictly private arrangement between Fred Hammond and myself.

(Witness Continuing:) None of the profits of that business went to any other person than myself. Neither Fred Hammond nor A. B. Hammond at any time shared in my profits; nor did the Missoula Mercantile Company, nor the Montana Improvement Company have any interest in my profits. I did make profits. I cut along that country from 1886 to 1891. During the last two or three years, from 1889 to '91, the operations were small. My operations extended from May, 1886, to May or June, 1891, during the years 1890 and 1891, they were very small. The handy logs were cut away and lumber was low. In 1891 I sold some parts of my mill to McKean and McQuarrie, who had a mill on section 6-11-15, in Rich's Gulch. Some parts of the engine were sold to Harper and Baird, a few years after they had a mill on that section. It was simply junk. The engine and boilers were never moved away from there. Some portions of it I sold and the rest I left. The proceeds obtained from the sale of these portions I kept myself. [507]

At the time I did this cutting I was cutting on unsurveyed lands and before going upon that land, I believed and understood it was what we called mineral land.

Q. State to the Court and jury the basis of your belief at that time that it was mineral land.

A. I was familiar with the Act of June 3, 1878; see Chap. 150, 20 Stats., at Large, 88; that has been

(Testimony of G. W. Fenwick.)

read here to-day so many times. I was aware or was informed by my counsel in regard to the letter approved by the Honorable H. M. Teller, Secretary of the Interior and addressed by Commissioner McFarland to Registers and Receivers and Special Timber Agents, bearing date June 30, 1882, and which is found reported in Vol. I of the Decisions of the Department of the Interior relating to public lands, at pages 697, 698, and 699.

(Witness Continuing:) I might say in reference to Senator Teller's letter, that from the description that he gives of the topography of the country and the geographical conditions of the country, in my judgment this land I was about to cut over was of that character which would bring it within the terms of the letter. That was one of the circumstances that led me to believe it was mineral land. I knew of a placer mining claim being taken up on section 23, in township 11 north, range 15 west. From my investigations at that time, I know that it was patented; I also knew of a claim west of Bonita taken up by a man named Joe Sohll—two or three miles west of the mill on the flat. I was familiar with the mining operations at Wallace, eight miles west of Bonita. I also saw prospectors during the years I was there running the mill. I was familiar with an extensive mining enterprise at Rock Creek a year or [508] two after I closed my operations at Bonita. Rock Creek was three miles west of Bonita. These operations involved an expenditure of a tremendous amount of money, possibly a hundred thousand dol-

(Testimony of G. W. Fenwick.)

lars, or maybe two hundred thousand dollars. That was a year or two after I left Bonita. That was called the Quigley Mine. I was familiar with affidavits that had been made in regard to the mineral character of this section of the country. I think I remember the names of quite a number of men who made these affidavits. I was in close touch and was governed by the advice of my attorney at that time, the late T. C. Marshall of Missoula. I was acting under the advice of my counsel before and during the negotiations that led up to my purchase from Fred A. Hammond. I was led to believe, and I sincerely believed, that I was strictly acting in accordance with the law in going on this land, which I believed to be mineral. I spoke of being familiar with affidavits at the time I purchased the Bonita Mill from Fred A. Hammond. I had probably seen half a dozen affidavits. I don't know, for sure, but several.

Thereupon counsel for defendant hands to the witness two certain affidavits, one thereof purporting to be made and sworn to by H. A. Ameraux, dated November 21, 1885, and sworn to before Thomas C. Marshall, a notary public in and for the Territory of Montana, with notarial seal attached, the other purporting to be made and sworn to by William H. Smith dated November 21, 1885, and sworn to before Thomas C. Marshall, notary public in and for the Territory of Montana, with notarial seal attached. I can identify said affidavits purporting to have been made and sworn to by H. A. Ameraux and William H. Smith as having been seen by me before I made

(Testimony of G. W. Fenwick.)

my purchase of the [509] Bonita Mill.

Thereupon the defendant offered in evidence the said affidavits of the said H. A. Ameraux and said William H. Smith.

That the said affidavits were and are, respectively, in the words and figures following, to wit:

[Exhibit—Affidavit of H. A. Ameraux.]

Territory of Montana,
County of Missoula,—ss.

Before me, Thomas C. Marshall, a Notary Public in and for Montana Territory, personally appeared H. A. Ameraux, who being by me duly sworn, on his oath deposes and says: That he is a citizen and resident of Missoula County, Montana Territory, and has been for years; that he is well and personally acquainted with the land and country lying along the line of the Northern Pacific Railroad between the Town of Missoula and the Town of Bearmouth, in said Territory; that he has frequently passed over said land and is enabled to testify understandingly with regard thereto; that said land is mineral in character and not subject to entry under existing land laws of the United States as agricultural land, and that to his certain knowledge there are many mineral locations and leads, lodes or ledges bearing gold, silver and other precious metals, and that within said limits and near said Railroad is an organized mining district in which are a number of mines now being worked for precious metals; that said country and lands are essentially mineral land and unfit for agricultural lands and are

not chiefly valuable for the timber thereon.

H. A. AMERAUX.

Subscribed and sworn to before me on this 21 day of November, 1885.

[Notarial Seal] THOMAS C. MARSHALL,
Notary Public, Montana Territory. [510]

[Exhibit—Affidavit of William H. Smith.]

Territory of Montana,
County of Missoula,—ss.

Before me, Thomas C. Marshall, a Notary Public in and for Montana Territory, personally appeared William H. Smith, who being by me duly sworn, on his oath deposes and says: That he is a citizen and resident of Missoula County, Montana Territory, and has been for years; that he is well and personally acquainted with the land and country lying along the line of the Northern Pacific Railroad between the Town of Missoula and the Town of Bearmouth, in said Territory; that he has frequently passed over said land and is enabled to testify understandingly with regard thereto; that said land is mineral in character and not subject to entry under existing land laws of the United States as agricultural land, and that to his certain knowledge there are many mineral locations and leads, lodes or ledges bearing gold, silver and other precious metals, and that within said limits and near said Railroad is an organized mining district in which are a number of mines now being worked for precious metals; that said country and lands are essentially mineral land and unfit for agricultural lands and are

not chiefly valuable for the timber thereon.

WILLIAM H. SMITH.

Subscribed and sworn to before me on this 21 day of November, 1885.

[Notarial Seal] THOMAS C. MARSHALL,

Notary Public, Montana Territory.

To the introduction in evidence of the said affidavits and each thereof, plaintiff objected for the reason that they were, and each of them was, wholly irrelevant, incompetent and immaterial, and on the further ground that each is an *ex parte* affidavit, and an attempt to introduce evidence as to the mineral [511] character of the lands in question by an *ex parte* affidavit under conditions when the plaintiff in this case has had no opportunity to examine or cross-examine the witness testifying as to the mineral character of the land.

Thereupon the Court sustained the said objection of the plaintiff upon the sole ground that said affidavits were, and each of them was, an *ex parte* statement, by which the plaintiff could not be bound; to which ruling of the Court defendant then and there excepted.

Defendant's Exception No. 13-A. [512]

I testified that there was a mining district known as the Wallace Mining District, in the vicinity of my mill. My recollection of the Wallace Mining District is that it embraced an area from Missoula to Bearmouth, that is about sixteen miles east of Bonita, that was the base, and the vortex of the triangle was somewhere on the Blackfoot River, taking in land

north of the river involved in this suit. The district did not cover the country south of the Hellgate River. The country south of the river was more precipitous and rough than on its north side; the mountains in most places rose more abruptly direct from the river. There were canyons and gulches, deep gulches, at different places. Through that section it was very rough country, except in section 14-11-16 and section 26-11-15. Describing the country on the south side of the river as to its topographical characteristics, I would say, starting at section 12-11-16 they arose very steeply there a short distance from the river. There was a flat on the south side of said section 12, but after you got off the flat then the mountains rose abruptly. The river has changed since that. The river was more on the north side of the section formerly. The mountains rose abruptly. The next section to said section 12 would be section 18-11-15; there was no flat there; it was very high mountains. There are some gorges or valleys running through it, but not wide valleys like Cramer gulch, but narrow gorges. This would also apply to section 20 cornering on the southeast corner of said section 18—a little strip of land, a little flat, and the rest was very high mountains with ravines cutting through it. There was timber on these mountains, but it was a mountainous country and steep. That would apply also to [513] section 22-11-15, where this Medicine Tree Hill was. The country is steep and rose abruptly from the river, with the exception of a small flat. It was a rough, mountainous country

on the south side of the river, with no wide flats. Small creeks came in on the south side of the river; wherever there were narrow ravines, there were small creeks. There were no wide valleys on the south side of the river. Section 14-11-16 was comparatively flat until you would get pretty well up against the south line; there were a number of creeks come out of there in these gulches that were spoken of, Hutchins' Gulch, Welch's Gulch and Gillespie Gulch, where Harper and Baird's mill was—there was quite a large creek.

Defendant thereupon offered in evidence the organization minutes of the Wallace Mining District, and the said minutes were admitted in evidence and marked Defendant's Exhibit "G," and said exhibit is in the words and figures following, to wit:

[Defendant's Exhibit "G"—Minutes of Wallace Mining District.]

WALLACE MINING DISTRICT.

At a meeting of the miners and claim owners held at the house of Richard & Klein, at the New Quartz mining camp on Canneas Trail, Missoula County, Montana Territory, on Saturday, the 27th day of July, 1878, the following proceedings were had:

The meeting was organized by the election of W. J. McCormick, Esq., Chairman, and Frank H. Woody, Secretary.

The chairman briefly stated the object of the meeting to be the organization of the mining district, the election of a president and recorder, and such other

business as might properly be brought before said [514] meeting.

Moved and carried that a mining district be *layed* out and organized in the following described boundaries.

Beginning at the point where the Missoula and Deer Lodge county line crosses the Hellgate River, near McCarty's bridge, running thence north on said county line to the Big Blackfoot River to its confluence with the Hellgate River, thence up the Hellgate River to the county line, the place of beginning.

Moved and carried that said mining district be named and called Wallace Mining District.

On motion, R. F. Klein was elected president of Wallace Mining District.

On motion, John T. Richards was elected recorder of said district.

On motion, the secretary was directed to furnish a copy of the proceedings of this meeting to the "Missouliau," and request the publication of the same.

Upon consultation it was deemed best to defer the adoption of a set of by-laws for the district to some future meeting to be called by the president of the district.

The meeting then adjourned *sine die*.

W. J. McCORMICK,

Chairman.

FRANK H. WOODY,

Secretary.

(Testimony of G. W. Fenwick.)

Filed and recorded on the first day of August, 1878.

FRANK H. WOODY,
County Recorder, Missoula County, Montana, [515]

While I was operating the mill at Bonita, I saw Mr. A. B. Hammond there once, I think twice. He was at my house there or the shanty where I was living. That was a little house I was living in near the mill. I remember one occasion he rode in on horse-back and stayed a little while; got lunch, probably, I think he did. On another occasion, I remember of his coming there with a deputy sheriff with a subpoena for me to appear as a witness in a suit in which the Northern Pacific was involved.

Q. What acts, if any, of management in the Bonita Mill property on the Hellgate did Mr. A. B. Hammond exercise during the time that you have testified to, from your purchase in 1886 until the time that you gave up the mill?

Plaintiff objected to the question on the ground that it called for the conclusion of the witness, which objection was sustained by the Court; to which ruling of the Court defendant duly excepted.

Defendant's Exception No. 14.

(Witness Continuing:) During the years I operated there, Mr. A. B. Hammond did not give me any directions as to the management or logging business or anything concerning my operations. Mr. A. B. Hammond personally had nothing to do with the sale of my lumber; nor did he personally have any-

(Testimony of G. W. Fenwick.)

thing to do with the purchase of logs by me; nor did he personally have anything to do with the cutting of lumber by me; or its shipment; Mr. A. B. Hammond had nothing whatever to do with the employing of men by me. I know about Mr. Hathaway's going East for some men, which has been testified to. The facts are these: There was a scarcity of men. That, I think, was in 1887. I would not be sure about the year, but it was [516] during the earlier years of my operations at Bonita. Hathaway was sent to Minnesota to bring out some men—loggers. I think arrangements were made by W. H. Hammond and myself to send him there. He brought out quite a large number of men and I got quite a few of them myself. As to paying Mr. Hathaway for his services in going East for these men, I bore my share of the expenses; I forgot how much it was, but it was divided up among a number of us who were operating mills at the time. Mr. A. B. Hammond did not ever directly or indirectly engage any men to work for me at the Bonita Mill while I was there; he may have told some one that they might go down there—some one might have applied to him for a position, and he may have advised some one to go up there and see what they could do. I do not know of any such instance having taken place. As a matter of fact, in the employment of men, I employed the men—all of the men myself. I had a small commissary store at my mill for supplying the men chiefly with such goods as they required in the way of clothing, boots, shoes and tobacco, and also supplies from the cook-

(Testimony of G. W. Fenwick.)

house that some families would purchase that lived there, such supplies as were not carried in the store proper. I bought in wholesale quantities my mill supplies and commissary supplies from the Missoula Mercantile Company. I would buy beef, hay and grain from the ranch men, from the Cramer Ranch, that is about the only one that was there. I sold goods at my store or commissary at a profit. I paid the wholesale price and sold at a profit. I did not divide my profits with any person or corporation. I absorbed them, kept them myself. No persons, either directly or indirectly, had any interest in those profits other than myself. [517] While I was operating the mill at Bonita, I did not sell any lumber to the Missoula Mercantile Company. Mr. A. B. Hammond did not, nor did any firm or corporation with which he was connected, purchase any lumber from me at any time while I was operating the Bonita Mill.

J.B.
3120.